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REO MOTORS, INC., *Petitioner,* *vs.* COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DOCKET No. 6409

APPEARANCES:

For Petitioner:

ROBERT H. MONTGOMERY
JAMES O. WYNN
J. MARVIN HAYNES
WALLACE C. MAGATHAN
G. HAROLD BLATTMACHR

For Respondent:

P. M. CLARK
LEONARD RAUM

Docket Entries.

1944

Nov. 3—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 7—Copy of petition served on General Counsel.

Nov. 3—Request for Circuit hearing in Detroit, Michigan filed by taxpayer. 11/14/44 Granted.

Dec. 15—Answer filed by General Counsel.

Dec. 21—Copy of answer served on taxpayer, Detroit, Mich. calendar.

1945

Oct. 18—Notice placing proceedings on calendar of 12/10/45, Detroit, Michigan.

Docket Entries

1945

Nov. 23—Motion for leave to amend petition, amended petition lodged, filed by taxpayer. 12/10/45 Granted.

Nov. 27—Hearing set 12/10/45, Detroit, Michigan on petitioner's motion.

Nov. 27—Copy of motion, amended petition and notice of hearing served on General Counsel.

Dec. 14—Hearing had before Judge Hill on motion of counsel for petitioner to continue and there being no objection by counsel for respondent, it is ordered that above proceeding is continued to 1/10/46 at Washington, D. C. Entry of appearance of James O. Wynn, Esq., and G. Harold Blattmachr as counsel filed. Amended petition and answer to amended petition filed.

Dec. 14—Order, proceeding continued to 1/10/46 entered.

1946

Jan. 10—Hearing had before Judge Hill on merits. Stipulation as to facts filed. Briefs due 3/6/46; Reply due 3/25/46.

Jan. 12—Transcript of hearing 12/14/45 filed.

Jan. 15—Transcript of hearing 1/10/46 filed.

Mar. 4—Motion for extension to April 5, 1946 to file respondent's brief and to April 24, 1946 to file reply briefs filed by General Counsel. 3/5/46 Granted.

Mar. 6—Brief filed by taxpayer. Served 3/25/46.

Mar. 25—Brief filed by General Counsel. Served 3/25/46.

Apr. 24—Reply brief filed by taxpayer. 4/24/46 Served.

Apr. 23—Reply brief filed by General Counsel. Served 4/25/46.

Docket Entries

1947

Sep. 10—Findings of fact and opinion rendered, Judge Hill. Decision will be entered under Rule 50. Copy served.

Oct. 30—Respondent's computation for entry of decision filed.

Oct. 30—Consent to respondent's computation for entry of decision filed by taxpayer.

Nov. 5—Decision entered, Judge Arnold, Div. 12.

Dec. 11—Petition for review by U. S. Circuit Court of Appeals for the Sixth Circuit filed by taxpayer.

Dec. 11—Proof of service filed.

1948

Jan. 12—Motion for extension of time to 3/1/48 for filing the record on appeal filed by taxpayer. No objection by General Counsel.

Jan. 12—Order enlarging the time to 3/10/48 for filing the record on appeal entered.

Feb. 18—Statement of points filed by taxpayer.

Feb. 18—Designation of the portions of the record, proceedings and evidence to be contained in the record filed by taxpayer with proof of service thereon.

Feb. 24—Designation of additional portions of record filed by General Counsel with statement of service by mail.

Feb. 27—Supplemental Designation of additional portions of the record filed by taxpayer with proof of service thereon.

Mar. 2—Proof of service of respondent's designation of additional portions of record filed.

Petition.

THE TAX COURT OF THE UNITED STATES

[Filed November 3, 1944.]

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	DOCKET No. 6409

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated August 16, 1944, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation organized and existing under the laws of the State of Michigan with its principal office at 1331 South Washington Avenue, Lansing 20, Michigan. The returns for the period here involved were filed with the Collector of Internal Revenue of Michigan.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on August 16, 1944.

3. The taxes in controversy are income tax for the taxable year ended December 31, 1942 in the sum of $556,916.08 and excess profits tax for the taxable year ended December 31, 1942 in the sum of $268,655.14. The deficiency asserted for the taxable year ended December 31, 1942 is $565,971.65 for income tax and $268,655.14 for excess profits tax.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent erred in failing to allow as a deduction from the gross income of the petitioner for the calendar year ended December 31, 1942 a net operating loss deduction in the amount of $1,698,981.35.

(b) In the alternative, if it should be held that the respondent did not err as alleged in paragraph 4 (a) hereof, the petitioner alleges that the respondent erred in failing to allow as a deduction from the gross income of the petitioner for the calendar year 1942, a net operating loss of $1,373,841.24.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

As to the Error Alleged in Paragraph 4 (a) Herein:

(a) Petitioner was organized on January 2, 1940. In or about the month of January 1940, the petitioner acquired all of the assets of Reo Motor Car Company, a corporation of the State of Michigan, in exchange solely for all of the voting stock of the petitioner, consisting of 2,000,000 shares of common stock, and for the assumption by the petitioner of certain liabilities of said Reo Motor Car Company.

(b) Included among the assets acquired by the petitioner, as alleged in paragraph 5 (a) hereof, were all of the shares of the common stock of Reo Sales Corporation. The basis for determining loss on a sale or other disposition of said shares of the common stock of Reo Sales Corporation, as correctly determined by the respondent was $1,552,248.16.

(c) Included among the assets acquired by the petitioner, as alleged in paragraph 5 (a) hereof, were 200,000 shares of the treasury stock of said Reo Motor Car Company. The petitioner issued 200,000 shares of its common stock (being a part of the 2,000,000 shares described in paragraph 5 (a) hereof) in exchange for said 200,000 shares of the treasury stock of said Reo Motor Car Company. The basis for determining loss on a sale or other disposition of said 200,000 shares of the petitioner's stock, as correctly determined by the respondent, was $545,550.

(d) On or about October 7, 1940, petitioner entered into an agreement with one Henry E. Hund by the terms of which petitioner agreed to reduce the number of the shares of its common stock from 2,000,000 to 500,000, and thus to reduce the 200,000 shares of its stock described in paragraph 5 (c) hereof to 50,000. By the terms of said agreement said Henry E. Hund was given an option to purchase 45,000 of said 50,000 shares. Thereafter, petitioner held said 45,000 shares primarily for sale to said Henry E. Hund in the ordinary course of business.

(e) During all of the calendar year 1941, said Reo Sales Corporation had no class of stock other than said common stock described in paragraph 5 (b) hereof, all of which was, during the whole of said year owned directly by the petitioner. More than ninety per centum of the aggregate of the gross income of said Reo Sales Corporation for all taxable years had been from sources other than royalties, rents, dividends, interest, annuities, or gains from sales or exchanges of stocks and securities.

(f) During the calendar year 1941, said common stock of said Reo Sales Corporation became worthless, and the

petitioner by reason thereof suffered a loss, as correctly determined by the respondent, of $1,552,248.16.

(g) During the calendar year 1941, petitioner sold 15,000 of the 45,000 shares of stock described in paragraph 5 (d) hereof to said Henry E. Hund for $41,250, and the petitioner by reason thereof suffered a loss of $504,300.

(h) For the taxable year 1941, the deductions allowed the petitioner by Chapter 1 of the Internal Revenue Code, as correctly determined by the respondent, amounted to $4,272,275.24. Said deductions of $4,272,275.24 do not include any deduction for depletion or any deduction for a net operating loss deduction. Said deductions of $4,272,-275.24 do include the losses of $1,552,248.16 and $504,300, described in paragraphs 5 (f) and 5 (g) hereof, respectively. No tax imposed by subchapter E of Chapter 2 of the Internal Revenue Code was paid or accrued by the petitioner within the taxable year 1941.

(i) During the taxable year 1941, the gross income of the petitioner, as correctly determined by the respondent, was $2,573,259.89. During the taxable year 1941, the petitioner received no interest which was wholly exempt from the taxes imposed by Chapter 1 of the Internal Revenue Code.

(j) By reason of the facts alleged in paragraphs 5 (a) to 5 (i), both inclusive, hereof, the petitioner in the taxable year 1941 sustained a net operating loss of $1,699,-015.35, being the excess of the deductions of $4,272,275.24 allowed by Chapter 1 of the Internal Revenue Code as alleged in paragraph 5 (h) hereof, over the gross income of $2,573,259.89, as alleged in paragraph 5 (i) hereof. Said

net operating loss sustained in 1941 is a net operating loss carry-over to the calendar year 1942.

(k) During the calendar year 1942, the net income of the petitioner, before the allowance of any net operating loss deduction was, as correctly determined by the respondent, $1,926,136.34. In the computation of said net income no deduction for depletion was allowed. During the calendar year 1942, the petitioner received no interest which was wholly exempt from the taxes imposed by Chapter 1 of the Internal Revenue Code. In the calendar year 1942, the petitioner realized no gains and suffered no losses from sales or exchanges of capital assets.

(l) For the year 1942, the normal tax net income of the petitioner, computed without any deduction for a net operating loss deduction and without any credit for adjusted excess profits tax net income, was $1,926,102.34.

(m) By reason of the facts alleged in paragraphs 5 (a) to 5 (l), both inclusive, hereof, the petitioner was entitled, in the determination of its net income for the calendar year 1942, to have deducted from the gross income for said year, a net operating loss deduction of $1,698,981.35, being the amount of said net operating loss carry-over of $1,699,015.35, as alleged in paragraph 5 (j) hereof, reduced by the amount ($34.00) by which the net income of $1,926,136.14, as alleged in paragraph 5 (k) hereof, exceeded the normal tax net income of $1,926,102.34, as alleged in paragraph 5 (l) hereof.

(n) In the computation of the petitioner's net income for the calendar year 1942, upon the basis of which the deficiency herein was determined, respondent did not allow any deduction from the petitioner's gross income for said year for a net operating loss deduction.

AS TO THE ERROR ALLEGED IN PARAGRAPH 4 (b) HEREIN:

(o) Petitioner repeats and realleges the facts alleged in paragraphs 5 (a) to 5 (i), both inclusive, and paragraphs 5 (k), 5 (l) and 5 (n) hereof.

(p) Included in petitioner's gross income for the calendar year 1941 of $2,573,259.89, as alleged in paragraph 5 (i) hereof, was $169,021.18 of recognized gains from the sale in 1941 of property, to wit., buildings, equipment, furniture and fixtures, machinery, automobiles and trucks, used in the trade or business of the petitioner, all of which were of a character which was subject to the allowance for depreciation provided in section 23 (l) of the Internal Revenue Code. Also included in said gross income of $2,573,259.89 is $10,138.71 of recognized gains from the sale in 1941 of real property used in the trade or business of the petitioner. At the time or times said property and real property was sold, it had been held by the petitioner for more than six months. None of said property and real property was of a kind which would properly be included in the inventory of the petitioner if on hand at the close of the taxable year, and none of said property and real property was held by the petitioner primarily for sale to customers in the ordinary course of its trade or business. During the calendar year 1941, the petitioner suffered no losses from the sale or exchange of property used in its trade or business, of a character which was subject to the allowance for depreciation provided in section 23 (l) of the Internal Revenue Code or from the sale or exchange of real property used in its trade or business. During the calendar year 1941, the petitioner suffered no losses from the compulsory or involuntary conversion into other property or money of any capital assets, any property used in the trade or business

of the petitioner, of a character which was subject to the allowance for depreciation provided in section 23 (l) of the Internal Revenue Code, or of real property used in the trade or business of the petitioner.

(q) If it should be held that the loss sustained by the petitioner as alleged in paragraph 5 (g) hereof was loss from the sale of a capital asset, then the petitioner alleges that by reason of the facts alleged in paragraphs 5 (a) to 5 (i), both inclusive, and paragraphs 5 (n) and 5 (p) hereof, the petitioner, in the taxable year 1941 sustained a net operating loss of $1,373,875.24, being the excess of the deductions of $4,272,275.24, allowed by Chapter 1 of the Internal Revenue Code, as alleged in paragraph 5 (h) hereof, (reduced by the amount ($325,140.11) by which the loss of $504,300 sustained as alleged in paragraph 5 (g) hereof exceeded the gains of $179,159.89 ($169,021.18 plus $10,138.71) realized as alleged in paragraph 5 (p) hereof), over the gross income as alleged in paragraph 5 (i) hereof; that said net operating loss sustained in 1941 is a net operating loss carry-over to the calendar year 1942; and that by reason of the facts alleged in paragraphs 5 (a) to 5 (i), both inclusive, in paragraphs 5 (k), 5 (l) and 5 (p) hereof and in this paragraph, the petitioner was entitled, in the determination of its net income for 1942, to have deducted from its gross income for said year, a net operating loss deduction of $1,373,841.24, being the amount of said operating loss carry-over of $1,373,875.24 reduced by the amount ($34.00) by which the net income of $1,926,136.34, as alleged in paragraph 5 (k) hereof exceeded the normal tax net income of $1,926,102.34, as alleged in paragraph 5 (l) hereof.

WHEREFORE, the petitioner prays that this Court may hear the proceeding and determine that the respondent has erred as alleged in paragraph 4 herein and grant petitioner such other and further relief as to the Court shall seem meet.

ROBERT H. MONTGOMERY
Robert H. Montgomery,
Attorney for Petitioner,
916 Investment Building,
Washington, D. C.

Of Counsel:

JAMES O. WYNN
J. MARVIN HAYNES
WALLACE C. MAGATHAN

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.:

ALLEN R. KENNY, being duly sworn, says that he is Assistant Treasurer of Reo Motors, Inc., the petitioner above named, that he is duly authorized to verify the foregoing petition, that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be alleged upon information and belief, and those facts he believes to be true.

ALLEN R. KENNY

Subscribed and sworn to before me this 30 day of October, 1944.

CYRUS J. RATH
Notary Public.

Cyrus J. Rath
Notary Public, Ingham County, Mich.
My Commission Expires Dec. 29, 1945

(NOTARIAL SEAL)

EXHIBIT A

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

Office of
Internal Revenue Agent in Charge
Detroit Division
1808 Penobscot Building
IT: Conf.

August 16, 1944

Reo Motors, Inc.,
1331 South Washington Avenue,
Lansing, Michigan

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year 1942 discloses a deficiency of $565,971.65 and that the determination of your excess profits tax liability for the year mentioned discloses a deficiency of $268,655.14 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date

of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Detroit 26, Michigan, for the attention of IT:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

JOSEPH D. NUNAN, JR.
Commissioner,

By GEO H. NEAL
Internal Revenue Agent
in Charge.

Enclosures:

Statement.
Form of waiver

EG

STATEMENT

Reo Motors, Inc.,
1331 South Washington Avenue,
Lansing, Michigan.

Tax Liability for Taxable Year Ended
December 31, 1942

INCOME TAX

Year	*Liability*	*Assessed*	*Deficiency*
1942	$630,145.28	$64,173.63	$565,971.65

EXCESS PROFITS TAX

1942	$268,655.14	$ None	$268,655.14

In making this determination of your income and excess profits tax liability, careful consideration has been given to the reports of examination dated January 11, 1944 and June 19, 1944; to your protest dated May 5 and to the statements made at conference held on June 12, 1944; and to your claim for refund filed May 21, 1943.

If a petition to the Tax Court of the United States is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Court in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with section 3772 of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. A. L. Currie, 1946 Penobscot Building, Detroit 26, Michigan, in accordance with authority contained in a power of attorney executed by you and on file in the Bureau.

Petition

INCOME TAX

Adjustments to Net Income

Net income as disclosed by amended return		$ 130,369.45
Unallowable deductions and Additional income:		
(a) Loss from sale of property	$ 66,516.13	
(b) Depreciation	305,096.60	
(c) Net operating loss deduction	2,079,154.16	2,450,766.89
Total		$2,581,136.34
Nontaxable income and Additional deductions:		
(d) Renegotiation adjustment		655,000.00
Net income as adjusted		$1,926,136.34

EXPLANATION OF ADJUSTMENTS

(a) Loss from sale of property as claimed	$211,368.44
Loss from sale of property as corrected	144,852.31
Loss disallowed	$ 66,516.13

The loss as corrected is set forth in detail in the report of examination dated January 11, 1944 submitted to you under date of April 7, 1944. The adjustment is due prin-

cipally to your failure to take into consideration the proper depreciation allowed or allowable on the assets sold.

(b) Depreciation deducted	$421,755.83
Depreciation as corrected	116,659.23
Depreciation disallowed	$305,096.60

The computation of depreciation as corrected is set forth in detail in Exhibit G of the report of examination dated January 11, 1944.

Of the depreciation disallowed, the amount of $159,815.94 represents disallowance of a deduction claimed for accelerated depreciation.

It is held that you are not entitled to a deduction for accelerated depreciation on account of the additional use of your machinery and equipment since any increase in wear and tear is offset by added repairs and maintenance beyond your normal requirements.

(c) You claimed a net operating loss deduction of $2,079,154.16 as set forth in a schedule attached to your original return.

The deduction is made up of a carry-over from the prior years as follows:

Year 1940	$ 576,410.68
Year 1941	1,502,743.48
Total	$2,079,154.16

Petition

The carry-over of the net operating loss from the year 1940 has been disallowed since examination of your return for such year resulted in a final determination of taxable income in the amount of $196,370.56 instead of the loss reported. In your protest no exception was taken to this disallowance of the 1940 loss carry-over.

No net operating loss deduction for the year 1941 has been allowed under the provisions of Section 122 of the Internal Revenue Code, as a carry-over to 1942 since capital losses sustained and deductible in 1941 exceeded the statutory loss as determined for the year 1941.

The net loss for the year 1941 resulted chiefly from the deduction of an amount of $1,552,248.16 from the worthlessness in 1941 of your investment in the stock of a subsidiary. This stock was a capital asset under the Internal Revenue Code for 1941 and constituted a capital loss in 1941 and was allowed as a long term capital loss, deductible without limitation as claimed in your return for the year 1941. In computing the amount of the net operating loss deduction claimed in 1942 you included therein as part of the net operating loss carry-over from 1941 the loss of $1,552,248.16 sustained by you in 1941 on the stock of the subsidiary. You contend that under Section 23(g)(4) of the Internal Revenue Code as amended by the Revenue Act of 1942 the loss on dissolution in 1941 of your wholly owned subsidiary company is not a capital loss for the purpose of determining the 1941 net operating loss deduction carried over to 1942.

It is held that the net operating loss deduction allowable for the year 1942 is to be determined under the Internal

Revenue Code as it existed in the year in which the net operating loss was sustained. Therefore, under the Internal Revenue Code in effect for the year 1941, the capital loss of $1,552,248.16 sustained upon dissolution of your subsidiary company is not allowable as a deduction in determining the net operating loss carry-over to the year 1942.

(d) The net income reported has been reduced in the amount of $655,000.00 representing a repayment of excessive profits for the taxable year ended December 31, 1942, pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended.

COMPUTATION OF TAX

Declared Value Excess Profits Tax

Taxable net income		$1,926,136.34
Less:		
Dividends received credit (85% of $40.00)	$ 34.00	
10% of $30,000,000.00 value of capital stock as declared in your capital stock tax return for year ended June 30, 1942	3,000,000.00	3,000,034.00
(a) Net income subject to declared value excess-profits tax		$ None
Declared value excess-profits tax		$ None
Declared value excess profits-tax assessed:		
Original list, Acct. No. 150436		None
Deficiency or overassessment of declared value excess profits tax		$ None

COMPUTATION OF TAX

Income Tax

Net income for declared value excess-profits tax computation		$1,926,136.34
Less:		
Income subject to excess profits tax	$ 306,691.15	
Dividend received credit	34.00	306,725.15
Normal tax net income		$1,619,411.19
Normal tax at 24% of $1,619,411.19		$ 388,658.69
Surtax net income	$1,619,411.19	
Surtax at 16% of $1,619,411.19		259,105.79
Total normal tax and surtax		$ 647,764.48
Less:		
Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation		17,619.20
Balance of normal tax and surtax		$ 630,145.28
Income tax assessed:		
Original list, Acct. No. 1504346	$98,620.25	
Less: Credit August 24, 1943 under Section 3806B	34,446.62	
Net assessment		64,173.63
Deficiency in income tax		$ 565,971.65

ADJUSTMENTS TO EXCESS PROFITS NET INCOME COMPUTED UNDER INVESTED CAPITAL CREDIT METHOD

Excess profits net income as disclosed by amended return		$ 134,123.99
Additions:		
(a) Normal tax net income	$1,795,766.89	
(b) Recoveries of bad debts	1,476.42	1,797,243.31
Total		$1,931,367.30
Nontaxable income and Additional deductions:		
(c) Adjustment to net operating loss deduction	$ 26,414.51	
(d) Abnormal income	8,185.44	34,599.95
Net income as adjusted		$1,896,767.35

Explanation of Adjustments

(a) The increase in normal tax net income is due to adjustments of income tax net income as previously shown herein and explained.

(b) Recovery of bad debts is not a proper adjustment under Section 711(a)(1)(E) of the Internal Revenue Code, where the reserve method is used for charging off bad debts. See Section 30.711(a)-2 of Regulations 109.

(c) The adjustment to net operating loss deduction has been eliminated since the normal tax net income as adjusted includes no allowance for net operating loss deduction in 1942.

(d) You have been allowed a reduction in excess profits net income of $8,185.44 for abnormal income under Section 721 of the Internal Revenue Code in connection with payment received in 1942 from Morey Machinery Company.

COMPUTATION OF EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAL

	Invested Capital		
	1940	1941	1942
Equity invested capital at beginning of taxable year			
Capital stock	$ 3,937,250.00	$ 3,937,250.00	$ 3,937,250.00
Earned surplus	6,104,484.50	6,242,944.34	4,543,928.99
Total	$10,041,734.50	$10,180,194.34	$ 8,481,178.99
Average borrowed invested capital as reported	351,308.74	304,350.47	849,891.98
Average invested capital	$10,393,043.24	$10,484,544.81	$ 9,331,070.97
Reduction on account of inadmissible assets	3,564,813.83	2,316,035.77	1,255,962.15
Invested capital	$ 6,828,229.41	$ 8,168,509.04	$ 8,075,108.82
Excess profits credit			
8% of $6,828,229.41	$ 546,258.39		
8% of $5,000,000.00		$ 400,000.00	$ 400,000.00
7% of $3,168,509.04		221,795.63	
7% of $3,075,108.82			215,257.61
Excess profits credit	$ 546,258.39	$ 621,795.63	$ 615,257.61

The detail of the above determination of equity invested capital and reduction in admissible assets is set forth in the report of examination dated January 11, 1944 and the supplemental report of examination dated June 19, 1944.

UNUSED EXCESS PROFITS CREDIT CARRY-OVER

	1940	1941	Total
Excess profits credit	$546,258.39	$621,795.63	$1,168,054.02
Excess profits net income	None	190,049.99	190,049.99
Excess profits credit carry-over	$546,258.39	$431,754.64	$ 978,004.03

COMPUTATION OF EXCESS PROFITS TAX

Excess profits net income as adjusted		$1,896,767.35
Less:		
Specific exemption	$ 5,000.00	
Excess profits credit based on income as adjusted	615,257.61	
Excess profits credit carry-over	978,004.03	1,598,261.64
Adjusted excess profits net income		$ 298,505.71
(A) 90% of above		268,655.14
Surtax net income (without regard to section 26(e))		$1,926,102.34
80% of above		$1,540,881.88
Income tax under Chapter 1		647,764.48
(B) Excess		$ 893,117.40
Item (A) or (B) whichever is lesser		$ 268,655.14
Excess profits tax liability		$ 268,655.14
Excess profits tax assessed:		
Original list, Acct. No. NC106585		None
Deficiency of excess profits tax		$ 268,655.14

Answer.

THE TAX COURT OF THE UNITED STATES

(Filed December 15, 1944)

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	DOCKET No. 6409

COMES NOW the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits so much of paragraph 3 as alleges that the taxes in controversy are income tax for the taxable year ended December 31, 1942, and that the deficiency asserted for the taxable year ended December 31, 1942, is $565,971.65 for income tax and $268,655.14 for excess profits tax; denies the remaining allegations contained in paragraph 3 of the petition.

4(a) and (b). Denies that the Commissioner erred as set forth in subparagraphs (a) and (b) of paragraph 4 of the petition.

5. AS TO THE ERROR ALLEGED IN PARAGRAPH 4(a) OF PETITION.

(a) to (m), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (m), inclusive, of paragraph 5 of the petition.

(n). Admits the allegations of fact contained in subparagraph (n) of paragraph 5 of the petition.

5. As to the error alleged in Paragraph 4(b) of Petition.

(o). Denies the allegations of fact contained in paragraphs 5(a) to 5(i), both inclusive, and paragraphs 5(k) and 5(l) hereof, which facts are repeated and realleged by petitioner in subparagraphs (o) of paragraph 5 of the petition. Admits the allegations of fact contained in paragraph 5(n) of the petition, which facts are repeated and realleged by petitioner in subparagraph (o) of paragraph 5 of the petition.

(p) and (q). Denies the allegations of fact contained in subparagraphs (p) and (q) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) J. P. Wenchel
P. M. C.

J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

DeWitt M. Evans,
Division Counsel.

Philip M. Clark,
Special Attorney,
Bureau of Internal Revenue.

Amended Petition.

THE TAX COURT OF THE UNITED STATES

(Filed December 10, 1945)

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	DOCKET No. 6409

Leave from this Court first having been obtained, the above named petitioner hereby files this amended petition praying for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated August 16, 1944, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation organized and existing under the laws of the State of Michigan with its principal office at 1331 South Washington Avenue, Lansing 20, Michigan. The income and excess profits tax returns of the petitioner for the period here involved were filed with the Collector of Internal Revenue for the District of Michigan.

2. The notice of deficiency (a copy of which is attached hereto and marked "Exhibit A") was mailed to the petitioner on August 16, 1944.

3. The taxes in controversy are income taxes for the calendar year 1942 in the sum of $556,916.08, and excess profits tax for the calendar year 1942 in the sum of $268,655.14. The deficiency of income taxes asserted is $565,971.65, and the deficiency of excess profits tax asserted is $268,655.14.

Amended Petition

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent erred in failing to allow as a deduction from the gross income of the petitioner for the calendar year 1942, a net operating loss deduction in the amount of $1,698,981.35.

(b) In the alternative, if it should be held that the respondent did not err as alleged in paragraph 4(a) hereof, the petitioner alleges that the respondent erred in failing to allow as a deduction from the gross income of the petitioner for the calendar year 1942, a net operating loss of $1,373,841.24.

(c) The respondent erred in reducing the equity invested capital of the petitioner as of the beginning of the calendar year 1942 by the excess of the loss sustained by the petitioner during the calendar year 1941 over the accumulation of earnings and profits of the petitioner during the calendar year 1940.

(d) In the alternative, if it should be held that the respondent did not err as alleged in paragraph 4(a) hereof in failing to allow as a deduction from the gross income of the petitioner for the calendar year 1942, that part of the net operating loss deduction alleged in said paragraph 4(a) resulting from the loss of $504,300 sustained as alleged in paragraph 5(o) hereof, and if it should be held that the respondent did not err as alleged in paragraph 4(c) herein, the petitioner alleges that the respondent erred in reducing the equity invested capital of the petitioner as of the beginning of the calendar year 1942 by the amount of said loss of $504,300 and in failing to increase equity invested capital as of January 1, 1942 by $51,562.50 being 125 per

centum of money paid in to the petitioner after December 31, 1940 and prior to January 1, 1942, for stock, as alleged in paragraph 5(o) herein.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

AS TO THE ERROR ALLEGED IN PARAGRAPH 4(a) HEREIN:

(a) The petitioner was organized on or about January 2, 1940.

(b) In or about the month of January, 1940, the petitioner acquired all of the assets of Reo Motor Car Company, a corporation of the State of Michigan.

(c) The assets acquired as alleged in paragraph 5(b) herein, were acquired solely for all of the voting stock of the petitioner, consisting of 2,000,000 shares of common stock, and for the assumption by the petitioner of certain liabilities of said Reo Motor Car Company.

(d) Included among the assets acquired by the petitioner, as alleged in paragraph 5(b) herein, were all of the shares of the common stock of Reo Sales Corporation.

(e) The basis for determining loss on a sale or other disposition of said shares of the common stock of Reo Sales Corporation, as correctly determined by the respondent, was $1,552,248.16.

(f) Included among the assets acquired by the petitioner, as alleged in paragraph 5(b) herein, were 200,000 shares of the treasury stock of said Reo Motor Car Company. The petitioner issued 200,000 shares of its common stock (being a part of the 2,000,000 shares described in paragraph 5(c) herein) in exchange for said 200,000 shares

of the treasury stock of said Reo Motor Car Company. The basis for determining loss on a sale or other disposition of said 200,000 shares of the petitioner's stock, as correctly determined by the respondent, was $1,818,670.99.

(g) On October 7, 1940, petitioner entered into an agreement with one Henry E. Hund by the terms of which petitioner agreed to reduce the number of shares of its common stock from 2,000,000 to 500,000 shares. A copy of said contract is hereto attached marked "Exhibit B".

(h) By the terms of the agreement described in paragraph 5 (g) herein, said Henry E. Hund was given an option to purchase 45,000 shares of the 500,000 shares described in said paragraph, at a price of One Dollar ($1.00) per share, the par value thereof.

(i) Thereafter, the petitioner held the 45,000 shares described in paragraph 5 (h) herein, primarily for sale to the said Henry E. Hund in the ordinary course of business.

(j) Thereafter petitioner, pursuant to the agreement described in paragraph 5 (g) herein, reduced the number of the shares of its common stock from 2,000,000 to 500,000.

(k) During all of the calendar year 1941, said Reo Sales Corporation had no class of stock other than said common stock described in paragraph 5 (d) herein.

(l) All of the said common stock of said Reo Sales Corporation, described in paragraph 5 (d) herein, was during the whole of the calendar year 1941 owned directly by the petitioner.

(m) More than 90 per centum of the aggregate of the gross income of said Reo Sales Corporation for all taxable years had been from sources other than royalties, rents,

dividends, interest, annuities, or gains from sales or exchanges of stocks and securities.

(n) During the calendar year 1941, said common stock of said Reo Sales Corporation became worthless, and the petitioner by reason thereof suffered a loss, as correctly determined by the respondent, of $1,552,248.16.

(o) During the calendar year 1941, petitioner sold 15,000 of the 45,000 shares of stock described in paragraph 5 (h) herein to said Henry E. Hund for $41,250, and the petitioner by reason thereof suffered a loss of $504,300.

(p) For the taxable year 1941, the following deductions were allowed petitioner by Chapter 1 of the Internal Revenue Code:

Compensation of Officers	$ 139,905.24
Salaries and Wages, not deducted elsewhere	673,874.43
Rent	51,621.52
Repairs	263,423.15
Bad Debts	252,636.36
Interest	24,417.05
Taxes	228,044.11
Depreciation	132,999.51
Other deductions authorzied by law	448,805.71
	$2,215,727.08

(q) The deductions described in paragraph 5 (p) herein do not include (as petitioner contends they should) a deduction for the loss arising out of the worthlessness of

the common stock of said Reo Sales Corporation, described in paragraph 5 (n) herein, and a deduction for a loss arising out of the sale in 1941 of 15,000 of the 45,000 shares of stock described in paragraphs 5 (h) and 5 (o) herein. Said losses were allowed by the respondent on his examination of the income and excess profits tax returns filed by the petitioner for the calendar year 1941.

(r) The deductions described in paragraph 5 (p) herein do not include any deduction for depletion.

(s) The deductions described in paragraph 5 (p) herein do not include a net operating loss deduction.

(t) No tax imposed by subchapter E of Chapter 2 of the Internal Revenue Code was paid or accrued by the petitioner within the calendar year 1941.

(u) During the calendar year 1941, the gross income of the petitioner was $2,573,259.89 as follows:

Gross Sales	$8,310,943.73
Less: Cost of goods sold	6,090,493.22
Gross profit from sales	$2,220,450.51
Interest on loans, notes, mortgages, bonds, bank deposits, etc.	20,637.57
Rents	91,048.06
Gains described in paragraph 5 (w) herein	169,021.18
Gains described in paragraph 5 (x) herein	10,138.71
Dividends	245.75
Other income	61,718.11
Total Gross Income	$2,573,259.89

(v) During the calendar year 1941, the petitioner received no interest which was wholly exempt from the taxes imposed by Chapter 1 of the Internal Revenue Code.

(w) Included in the gross income described in paragraph 5 (u) herein was $169,021.18 of recognized gains from the sale in 1941 of property, to wit, buildings, equipment, furniture and fixtures, machinery, automobiles and trucks, used in the trade or business of the petitioner.

(x) Also included in the gross income described in paragraph 5 (u) herein, was $10,138.71 of recognized gains from the sale of real property used in the trade or business of the petitioner.

(y) Of the basis of $1,552,248.16 described in paragraph 5 (e) herein, $25,000 was the original cost of said stock described in said paragraph, and the balance of $1,527,248.16 was the portion of the debt owed by said Reo Sales Corporation to the petitioner on December 31, 1939, which was on or about that date charged on the books of Reo Motor Car Company to an account on its books known as "Branch Receivable Control".

(z) In the alternative, if it should be held that the debt of $1,527,248.16, described in paragraph 5 (y) herein, was not a part of the basis of the stock of Reo Sales Corporation, as alleged in paragraph 5 (e) herein, the petitioner alleges that said debt became worthless in the calendar year 1941.

(aa) By reason of the facts alleged in paragraphs 5 (a) to 5 (z) herein, both inclusive, the petitioner in the tax-

able year 1941 sustained a net operating loss of $1,699,-015.35, being the excess of the deductions of $2,215,727.08 allowed by Chapter 1 of the Internal Revenue Code, as alleged in paragraph 5 (p) herein, plus the deductions aggregating $2,056,548.16 described in paragraph 5 (n) as to $1,552,248.16 and paragraph 5 (o) as to $504,300 (or in the alternative, in paragraph 5 (y) as to $25,000, in paragraph 5 (z) as to $1,527,248.16, and in paragraph 5 (o) as to $504,300), over the gross income of $2,573,259.89 as alleged in paragraph 5 (u) herein. Said net operating loss sustained in 1941 is a net operating loss carry-over to the calendar year 1942.

(bb) During the calendar year 1942, the net income of the petitioner, without any allowance of any net operating loss deduction, was, as correctly determined by the respondent, $1,926,136.34.

(cc) In the computation of the net income described in paragraph 5 (bb) herein, no deduction for depletion was allowed.

(dd) During the calendar year 1942, the petitioner received no interest which was wholly exempt from the taxes imposed by Chapter 1 of the Internal Revenue Code.

(ee) In the calendar year 1942, the petitioner realized no gains and suffered no losses from sales or exchanges of capital assets.

(ff) For the calendar year 1942, the normal tax net income of the petitioner, computed without any deduction for a net operating loss deduction and without any credit

for adjusted excess profits tax net income, was $1,926,102.34 as follows:

Net income as alleged in paragraph 5 (bb) herein		$1,926,136.34
MINUS, the credit provided in section 26 (a) of the Internal Revenue Code relating to interest on certain obligations of the United States and Government corporations		None
Adjusted net income		$1,926,136.34
MINUS:		
The credit for income subject to the tax imposed by subchapter E of Chapter 2 of the Internal Revenue Code provided in section 26(e) of the Internal Revenue Code	None	
The credit for dividends received provided in section 26 (b) of the Internal Revenue Code	$34.00	34.00
Normal Tax Net Income		$1,926,102.34

(gg) By reason of the facts alleged in paragraphs 5 (a) to 5 (ff) herein, both inclusive, the petitioner was entitled, in the determination of its net income for the calendar year 1942, to have deducted from its gross income for said year, a net operating loss deduction of $1,698,981.35, being the amount of said net operating loss carry-over of $1,699,-015.35, as alleged in paragraph 5 (aa) herein, reduced by the amount ($34.00) by which the net income of $1,926,136.14, as alleged in paragraph 5 (bb) herein exceeded the normal

tax net income of $1,926,102.34, as alleged in paragraph 5 (ff) herein.

(hh) In the computation of petitioner's net income for the calendar year 1942, upon the basis of which the alleged deficiency herein was determined, respondent did not allow any deduction from petitioner's gross income for said year for a net operating loss deduction.

As to the Error Alleged in Paragraph 4 (b) Herein:

(ii) Petitioner repeats and reallages the facts alleged in paragraphs 5 (a) to 5 (z) herein, both inclusive, and in paragraphs 5 (aa) to 5 (ff) herein, both inclusive, and in paragraph 5 (hh) herein.

(jj) All of the properties described in paragraph 5 (w) herein were of a character which was subject to the allowance for depreciation provided in section 23 (l) of the Internal Revenue Code.

(kk) At the time or times the property and real property described in paragraphs 5 (w) and 5 (x) herein was sold, it had been held by the petitioner for more than six months.

(ll) None of the property and real property described in paragraphs 5 (w) and 5 (x) herein, was of a kind which could properly be included in the inventory of the petitioner if on hand at the close of the taxable year.

(mm) None of the property and real property described in paragraphs 5 (w) and 5 (x) herein, was held by the petitioner primarily for sale to customers in the ordinary course of its trade or business.

(nn) During the calendar year 1941, the petitioner suffered no losses from the sale or exchange of property used

in its trade or business, of a character which was subject to the allowance for depreciation provided in section 23 (l) of the Internal Revenue Code, or from the sale or exchange of real property used in its trade or business. During the calendar year 1941, the petitioner suffered no losses from the compulsory or involuntary conversion into other property or money of any capital assets, any property used in the trade or business of the petitioner of a character which was subject to the allowance for depreciation provided in section 23 (l) of the Internal Revenue Code, or of real property used in the trade or business of the petitioner.

(oo) If it should be held that the loss sustained by the petitioner, as alleged in paragraph 5 (o) herein, was a loss from the sale of a capital asset, then the petitioner alleges that by reason of the facts alleged in paragraphs 5 (a) to 5 (z) herein, both inclusive, and paragraph 5 (hh), and paragraphs 5 (jj) to 5 (nn) herein, both inclusive, the petitioner, in the taxable year 1941, sustained a net operating loss of $1,373,875.24, being the excess of the deductions of $2,215,727.08 allowed by Chapter 1 of the Internal Revenue Code as alleged in paragraph 5 (p) herein, plus the deductions aggregating $2,056,548.16 described in paragraph 5 (n) as to $1,552,248.16 and paragraph 5 (o) as to $504,300 (or in the alternative, in paragraph 5 (y) as to $25,000, in paragraph 5 (z) as to $1,527,248.16, and in paragraph 5 (o) as to $504,300) (reduced by the amount ($325,140.11) by which the loss of $504,300 sustained as alleged in paragraph 5 (o) herein exceeded the gains of $179,159.89 ($169,021.18 plus $10,138.71) realized as alleged in paragraphs 5 (w) and 5 (x) herein), over the gross income of $2,573,259.89 as alleged in paragraph 5 (u) herein; that said net operat-

ing loss sustained in 1941 is a net operating loss carry-over to the calendar year 1942; and that by reason of the facts alleged in paragraphs 5 (w) and 5 (x) herein, paragraphs 5 (bb) to 5 (ff) herein, both inclusive, and paragraphs 5 (jj) to 5 (nn) herein, both inclusive, and in this paragraph, the petitioner was entitled, in the determination of its net income for 1942, to have deducted from its gross income for said year a net operating loss deduction of $1,373,841.24, being the amount of said operating loss carry-over of $1,373,875.24 reduced by the amount ($34.00) by which the net income of $1,926,136.34 as alleged in paragraph 5 (bb) herein, exceeded the normal tax net income of $1,926,102.34 as alleged in paragraph 5 (ff) herein.

As to the Error Alleged in Paragraph 4 (c) Herein:

(pp) Petitioner repeats and realleges the facts alleged in paragraphs 5 (a) to 5 (c) herein, both inclusive, paragraphs 5 (f) to 5 (i) herein, both inclusive, and paragraphs 5 (o) and 5 (aa) herein.

(qq) During the calendar year 1940, the petitioner's accumulated earnings and profits amounted, as correctly determined by the respondent, to $138,459.84.

(rr) In the determination of the deficiency of excess profits taxes from which this appeal is taken, the respondent has reduced the petitioner's equity invested capital as of January 1, 1942 by the amount ($1,560,555.51) by which the net loss for 1941 of $1,699,015.35, as alleged in paragraph 5 (aa) herein, exceeded petitioner's accumulation of earnings and profits in 1940 of $138,459.84 as alleged in paragraph 5 (qq) herein.

As to the Error Alleged in Paragraph 4 (d) Herein:

(ss) Petitioner repeats and realleges the facts alleged in paragraphs 5 (a) to 5 (i) herein, both inclusive, paragraph 5 (o) herein, paragraph 5 (aa) herein, and paragraphs 5 (qq) and 5 (rr) herein.

(tt) If it should be held that respondent did not err in failing to allow the loss of $504,300 sustained as alleged in paragraph 5 (o) herein, and if it should be held that the respondent did not err in reducing the petitioner's equity invested capital as of January 1, 1942 by the excess of the petitioner's 1941 net loss over the petitioner's 1940 accumulation of earnings and profits, the petitioner alleges that the sale, as alleged in paragraph 5 (o) herein, did not result in a loss, but instead that $41,250 was during the calendar year 1941 paid in to the petitioner for stock.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that the respondent has erred as alleged in paragraph 4 herein, and grant petitioner such other and further relief as to the Court shall seem proper.

Robt. H. Montgomery
Robert H. Montgomery
Attorney for the Petitioner,
916 Investment Building,
Washington 5, D. C.

Of Counsel:

James O. Wynn
J. Marvin Haynes
Wallace C. Magathan
G. Harold Blattmachr

Amended Petition

STATE OF MICHIGAN
COUNTY OF INGHAM } ss.:

H. E. HUND, being duly sworn, says that he is President of REO MOTORS, INC., the petitioner above named, that he is duly authorized to verify the foregoing amended petition, that he has read the foregoing amended petition or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be alleged upon information and belief, and those facts he believes to be true.

H. E. HUND

Subscribed and sworn to this
16th day of November, 1945.

CYRUS J. RATH
Notary Public.

CYRUS J. RATH
Notary Public, Ingham County, Mich.
My Commission Expires Dec. 29, 1945

(NOTARIAL SEAL)

Amended Petition

EXHIBIT A

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Office of
Internal Revenue Agent in Charge
Detroit Division
1808 Penobscot Building
IT: Conf.

August 16, 1944

Reo Motors, Inc.,
1331 South Washington Avenue,
Lansing, Michigan.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year 1942 discloses a deficiency of $565,971.65 and that the determination of your excess profits tax liability for the year mentioned discloses a deficiency of $268,655.14 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Detroit 26, Michigan,

for the attention of IT: Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

JOSEPH D. NUNAN, JR.
Commissioner,

By GEO. E. NEAL
Internal Revenue Agent in Charge.

Enclosures:
Statement.
Form of waiver

EG

STATEMENT

Reo Motors, Inc.,
1331 South Washington Avenue,
Lansing, Michigan.

TAX LIABILITY FOR TAXABLE YEAR ENDED DECEMBER 31, 1942

INCOME TAX

Year	*Liability*	*Assessed*	*Deficiency*
1942	$630,145.28	$64,173.63	$565,971.65

EXCESS PROFITS TAX

1942	$268,655.14	$ None	$268,655.14

Amended Petition

In making this determination of your income and excess profits tax liability, careful consideration has been given to the reports of examination dated January 11, 1944 and June 19, 1944; to your protest dated May 5 and to the statements made at conference held on June 12, 1944; and to your claim for refund filed May 21, 1943.

If a petition to the Tax Court of the United States is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Court in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with section 3772 of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. A. L. Currie, 1946 Penobscot Building, Detroit 26, Michigan, in accordance with authority contained in a power of attorney executed by you and on file in the Bureau.

INCOME TAX

Adjustments to Net Income

Net income as disclosed by amended return		$ 130,369.45
Unallowable deductions and Additional income:		
(a) Loss from sale of property	$ 66,516.13	
(b) Depreciation	305,096.60	
(c) Net operating loss deduction	2,079,154.16	2,450,766.89
Total		$2,581,136.34

Amended Petition

Nontaxable income and Additional deductions:	
(d) Renegotiation adjustment	655,000.00
Net income as adjusted	$1,926,136.34

EXPLANATION OF ADJUSTMENTS

(a) Loss from sale of property as claimed	$211,368.44
Loss from sale of property as corrected	144,852.31
Loss disallowed	$ 66,516.13

The loss as corrected is set forth in detail in the report of examination dated January 11, 1944 submitted to you under date of April 7, 1944. The adjustment is due principally to your failure to take into consideration the proper depreciation allowed or allowable on the assets sold.

(b) Depreciation deducted	$421,755.83
Depreciation as corrected	116,659.23
Depreciation disallowed	$305,096.60

The computation of depreciation as corrected is set forth in detail in Exhibit G of the report of examination dated January 11, 1944.

Of the depreciation disallowed, the amount of $159,815.94 represents disallowance of a deduction claimed for accelerated depreciation.

It is held that you are not entitled to a deduction for accelerated depreciation on account of the additional use of your machinery and equipment since any increase in wear and tear is offset by added repairs and maintenance beyond your normal requirements.

Amended Petition

(c) You claimed a net operating loss deduction of $2,079,154.16 as set forth in a schedule attached to your original return.

The deduction is made up of a carry-over from the prior years as follows:

Year 1940	$ 576,410.68
Year 1941	1,502,743.48
Total	$2,079,154.16

The carry-over of the net operating loss from the year 1940 has been disallowed since examination of your return for such year resulted in a final determination of taxable income in the amount of $196,370.56 instead of the loss reported. In your protest no exception was taken to this disallowance of the 1940 loss carry-over.

No net operating loss deduction for the year 1941 has been allowed under the provisions of Section 122 of the Internal Revenue Code, as a carry-over to 1942 since capital losses sustained and deductible in 1941 exceeded the statutory loss as determined for the year 1941.

The net loss for the year 1941 resulted chiefly from the deduction of an amount of $1,552,248.16 from the worthlessness in 1941 of your investment in the stock of a subsidiary. This stock was a capital asset under the Internal Revenue Code for 1941 and constituted a capital loss in 1941 and was allowed as a long term capital loss, deductible without limitation as claimed in your return for the year 1941. In computing the amount of the net operating loss deduction claimed in 1942 you included therein as part of the net operating loss carry-over from 1941 the loss of $1,552,248.16 sustained by you in 1941 on the stock of the subsidiary. You contend that under Section 23(g)(4) of the Internal Revenue Code as amended by the Revenue Act of

1942 the loss on dissolution in 1941 of your wholly owned subsidiary company is not a capital less for the purpose of determining the 1941 net operating loss deduction carried over to 1942.

It is held that the net operating loss deduction allowable for the year 1942 is to be determined under the Internal Revenue Code as it existed in the year in which the net operating loss was sustained. Therefore, under the Internal Revenue Code in effect for the year 1941, the capital loss of $1,552,248.16 sustained upon dissolution of your subsidiary company is not allowable as a deduction in determining the net operating loss carry-over to the year 1942.

(d) The net income reported has been reduced in the amount of $655,000.00 representing a repayment of excessive profits for the taxable year ended December 31, 1942, pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended.

COMPUTATION OF TAX

Declared Value Excess Profits Tax

Taxable net income		$1,926,136.34
Less:		
Dividends received credit (85% of $40.00)	$ 34.00	
10% of $30,000,000.00 value of capital stock as declared in your capital stock tax return for year ended June 30, 1942	3,000,000.00	3,000,034.00
(a) Net income subject to declared value excess-profits tax		$ None
Declared value excess-profits tax		$ None
Declared value excess profits-tax assessed: Original list, Acct. No. 150436		None
Deficiency or overassessment of declared value excess profits tax		$ None

Amended Petition

COMPUTATION OF TAX

Income Tax

Net income for declared value excess-profits tax computation		$1,926,136.34
Less:		
Income subject to excess profits tax	$ 306,691.15	
Dividend received credit	34.00	306,725.15
Normal tax net income		$1,619,411.19
Normal tax at 24% of $1,619,411.19		$ 388,658.69
Surtax net income	$1,619,411.19	
Surtax at 16% of $1,619,411.19		259,105.79
Total normal tax and surtax		$ 647,764.48
Less:		
Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation		17,619.20
Balance of normal tax and surtax		$ 630,145.28
Income tax assessed:		
Original list, Acct. No. 1504346	$98,620.25	
Less: Credit August 24, 1943 under Section 3806B	34,446.62	
Net assessment		64,173.63
Deficiency in income tax		$ 565,971.65

Amended Petition

ADJUSTMENTS TO EXCESS PROFITS NET INCOME COMPUTED UNDER INVESTED CAPITAL CREDIT METHOD

Excess profits net income as disclosed by amended return		$ 134,123.99
Additions:		
(a) Normal tax net income	$1,795,766.89	
(b) Recoveries of bad debts	1,476.42	1,797,243.31
Total		$1,931,367.30
Nontaxable income and Additional deductions:		
(c) Adjustment to net operating loss deduction	$ 26,414.51	
(d) Abnormal income	8,185.44	34,599.95
Net income as adjusted		$1,896,767.35

Explanation of Adjustments

(a) The increase in normal tax net income is due to adjustments of income tax net income as previously shown herein and explained.

(b) Recovery of bad debts is not a proper adjustment under Section 711(a)(1)(E) of the Internal Revenue Code, where the reserve method is used for charging off bad debts. See Section 30.711(a)-2 of Regulations 109.

(c) The adjustment to net operating loss deduction has been eliminated since the normal tax net income as adjusted includes no allowance for net operating loss deduction in 1942.

(d) You have been allowed a reduction in excess profits net income of $8,185.44 for abnormal income under Section 721 of the Internal Revenue Code in connection with payment received in 1942 from Morey Machinery Company.

Amended Petition

COMPUTATION OF EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAL

	Invested Capital		
	1940	1941	1942
Equity invested capital at beginning of taxable year			
Capital stock	$ 3,937,250.00	$ 3,937,250.00	$ 3,937,250.00
Earned surplus	6,104,484.50	6,242,944.34	4,543,928.99
Total	$10,041,734.50	$10,180,194.34	$ 8,481,178.99
Average borrowed invested capital as reported	351,308.74	304,350.47	849,891.98
Average invested capital	$10,393,043.24	$10,484,544.81	$ 9,331,070.97
Reduction on account of inadmissible assets	3,564,813.83	2,316,035.77	1,255,962.15
Invested capital	$ 6,828,229.41	$ 8,168,509.04	$ 8,075,108.82
Excess profits credit			
8% of $6,828,229.41	$ 546,258.39		
8% of $5,000,000.00		$ 400,000.00	$ 400,000.00
7% of $3,168,509.04		221,795.63	
7% of $3,075,108.82			215,257.61
Excess profits credit	$ 546,258.39	$ 621,795.63	$ 615,257.61

The detail of the above determination of equity invested capital and reduction in admissible assets is set forth in the report of examination dated January 11, 1944 and the supplemental report of examination dated June 19, 1944.

Amended Petition

UNUSED EXCESS PROFITS CREDIT CARRY-OVER

	1940	1941	Total
Excess profits credit	$546,258.39	$621,795.63	$1,168,054.02
Excess profits net income	None	190,049.99	190,049.99
Excess profits credit carry-over	$546,258.39	$431,754.64	$ 978,004.03

COMPUTATION OF EXCESS PROFITS TAX

Excess profits net income as adjusted		$1,896,767.35
Less:		
Specific exemption	$ 5,000.00	
Excess profits credit based on income as adjusted	615,257.61	
Excess profits credit carry-over	978,004.03	1,598,261.64
Adjusted excess profits net income		$ 298,505.71
(A) 90% of above		268,655.14
Surtax net income (without regard to section 26(e))		$1,926,102.34
80% of above		$1,540,881.88
Income tax under Chapter 1		647,764.48
(B) Excess		$ 893,117.40
Item (A) or (B) whichever is lesser		$ 268,655.14
Excess profits tax liability		$ 268,655.14
Excess profits tax assessed:		
Original list, Acct. No. NC106585		None
Deficiency of excess profits tax		$ 268,655.14

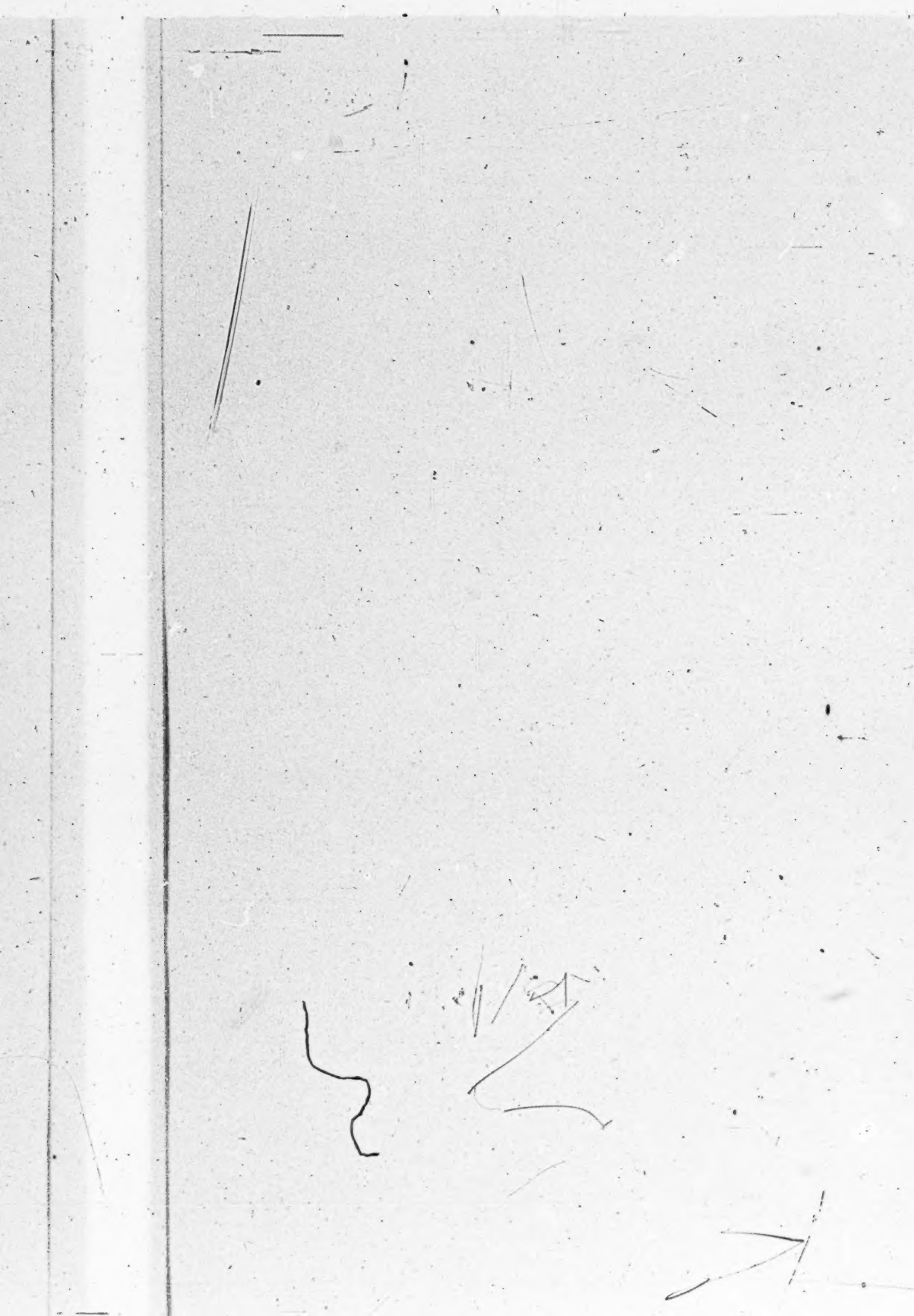

EXHIBIT B

REO MOTORS, INC.

CONTRACT FOR EMPLOYMENT OF GENERAL MANAGER

THIS AGREEMENT, made this 7th day of October, 1940, by and between REO MOTORS, INC., a Michigan corporation with its principal place of business in Lansing, Michigan, hereinafter referred to as "Reo", and HENRY E. HUND, of Detroit, Michigan, hereinafter referred to as the "General Manager", WITNESSETH THAT:

In consideration of the mutual agreements, covenants and conditions hereinafter contained, the parties hereto do hereby agree with each other as follows:

1. Reo hereby hires and employs the General Manager for a term beginning October 7, 1940, and expiring on December 31, 1942.

2. Reo agrees to pay the General Manager at the rate of Two Thousand Five Hundred Dollars ($2,500.00) per calendar month up to April 30, 1941, and at the rate of Three Thousand Four Hundred Dollars ($3,400.00) per calendar month for the subsequent 20 months of said employment, one-half of said monthly salary to be payable at the middle of each month and one-half at the end of each month. In case this contract shall be terminated by Reo as hereinafter provided at any time prior to November 1, 1941, Reo shall still be obligated to pay the General Manager at the rate of Two Thousand Five Hundred Dollars ($2,500.00) per month for any month or portion thereof still remaining subsequent to said termination and prior to November 1, 1941.

3. Reo hereby grants to the General Manager, as additional compensation for the services to be rendered by him under this contract, an option to purchase from Reo 45,000 shares of its capital stock at a price of $1.00 per share after the authorized capital stock of Reo shall have been reduced by proper action from 2,000,000 shares of the par value of $1.00 per share to 500,000 shares of the par value of $1.00 per share. The said option shall be exercised as follows: If the General Manager shall desire to exercise said option he shall notify Reo in writing during each calendar month beginning with the month of May 1941 that he desires to exercise his option to purchase 2,250 shares of Reo stock at the price of $1.00 per share, and Reo shall then issue said shares to the General Manager for such consideration to be paid in cash, provided, that during the period from May to October of 1941, inclusive, the said option shall be cumulative, and in case the General Manager shall fail to exercise his option for any one or more months, he shall have the right to exercise the same during any subsequent month in said period; thereafter the said option if not exercised in any calendar month for the full 2,250 shares shall be null and void. The option for any particular month shall be exercised in the full amount of 2,250 shares, except that during said cumulative period it shall be exercised in the same amount or multiples thereof if available.

4. The General Manager hereby accepts the employment as General Manager upon the terms above set forth, and does hereby agree to devote such of his time, energies and abilities to the interests of Reo as shall be required by the Board of Directors, and to perform the ordinary and usual duties of a General Manager, together with such other duties or functions as may be given to him by the Board

of Directors of Reo, and agrees to perform such duties in an efficient, trustworthy and businesslike manner.

5. It is mutually agreed that inasmuch as the management of Reo shall be satisfactory to the Reconstruction Finance Corporation under the terms of a mortgage loan made by the said corporation to Reo, this contract shall not be effective until approved by said Reconstruction Finance Corporation.

6. It is mutually agreed that this contract may be assigned by Reo to any successor to its corporation or business, but that the same shall not be assigned by the General Manager, it being in the nature of a contract for personal services.

7. It is mutually agreed that this contract may be terminated at any time by either party by at least ten days' notice in writing to the other party without any liability on either party for any unexpired portion of this contract except as provided in paragraph 2 in the case of termination by Reo.

IN WITNESS WHEREOF, Reo has caused this contract to be executed by its duly authorized officers and its seal affixed, and the General Manager has hereunto set his hand, as of the day and year first above written.

REO MOTORS, INC.

Witnesses:

O. A. SEYFORTH — By: W. C. WOOD
Its Vice President

as to

J. W. WILFORD — and R. F. McKIM
Ass't. Secretary

as to

A. LANGENBACHER — HENRY E. HUND

A. I. PHILP

Answer to Amended Petition.

THE TAX COURT OF THE UNITED STATES

[Filed December 12, 1945.]

REO MOTORS, INC., *Petitioner,* *vs.* COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DOCKET No. 6409

COMES NOW the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed in the above-entitled proceeding, admits, denies and avers as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the amended petition.

3. Denies the allegations contained in paragraph 3 of the amended petition, and avers that the deficiencies asserted in the notice of deficiency for the taxable year ended December 31, 1942, are $565,971.65 in respect of the income tax and $268,655.14 in respect of the excess profits tax.

4 (a) to (d), inclusive. Denies that the Commissioner erred as set forth in subparagraphs (a) to (d), inclusive, of paragraph 4 of the amended petition.

5 (a) to (z), inclusive, and (aa) to (tt), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (z), inclusive, and (aa) to (tt), inclusive, of paragraph 5 of the amended petition.

Answer to Amended Petition

6. Denies generally and specifically each and every allegation of the amended petition not hereinbefore admitted, qualified, or denied.

WHEREFORE, it is prayed that the appeal be denied.

Signed J. P. WENCHEL
PMC

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

DEWITT M. EVANS,
Division Counsel.

PHILIP M. CLARK,
LEONARD RAUM,
Special Attorneys.
Bureau of Internal Revenue.

Stipulation of Facts.

IN THE

TAX COURT OF THE UNITED STATES

[Filed January 10, 1946.]

REO MOTORS, INC., *Petitioner*, *v.* COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DOCKET No. 6409

The parties hereto, by their respective attorneys, stipulate and agree that the following facts shall be taken as true, each of the parties reserving the right to submit other and further facts not inconsistent with the facts herein stipulated:

FIRST: The petitioner is a corporation organized and existing under the laws of the State of Michigan. Petitioner has its principal office at 1331 South Washington Avenue, Lansing, Michigan.

SECOND: The corporation income and declared value excess profits tax return and the corporation excess profits tax return of the petitioner for the taxable year here involved were filed with the Collector of Internal Revenue for the District of Michigan.

THIRD: The notice of deficiency was mailed to the petitioner on August 16, 1944. A copy of said notice is attached to the petition in this proceeding, marked Exhibit A.

FOURTH: The taxes in controversy are the income tax and excess profits tax for the taxable year ended December 31, 1942. The deficiency asserted in respect of the income tax is $565,971.65. The deficiency asserted in respect of the excess profits tax is $268,655.14.

FIFTH: The petitioner's annual accounting period and the petitioner's taxable year are, and for all the taxable years of its existence have been, the calendar year.

SIXTH: Petitioner was organized on January 2, 1940.

SEVENTH: Reo Motor Car Company, a corporation, was organized under the laws of Michigan on August 16, 1904.

EIGHTH: On December 16, 1938, a voluntary petition for reorganization, in accordance with the provisions of Chapter X of the National Bankruptcy Act, as amended, was filed by said Reo Motor Car Company in the District Court of the United States for the Eastern District of Michigan, Southern Division. By order dated December 17, 1938, the said court approved said petition and appointed A. J. Brandt, of Detroit, Michigan, temporary trustee of the estate of said Reo Motor Car Company. By order dated February 10, 1939, said court appointed Theodore I. Fry of Lansing, Michigan, trustee of said estate. On September 20, 1939 said trustee submitted his "Fourth Amended Plan of Reorganization", a copy of which is an-

nexed hereto marked "Stipulation Exhibit 1". On October 9, 1939, said court approved said plan of reorganization dated September 20, 1939. On December 12, 1939, an order was entered by said court amending and confirming said plan of reorganization. A copy of said order of December 12, 1939 is hereto attached marked "Stipulation Exhibit 2". Said Reo Sales Corporation was not a party to the reorganization proceeding described in this paragraph or to any other reorganization proceeding, and in fact never was reorganized.

NINTH: Petitioner was organized pursuant to said plan of reorganization and is the "new corporation" therein referred to. On December 29, 1939, the name of Reo Motor Car Company was changed to Reo Land Company by certificate of amendment to the articles of association. On January 2, 1940, said Reo Land Company was dissolved.

TENTH: By order of said court dated January 5, 1940, said plan of reorganization was further amended. A copy of said order of January 5, 1940 is attached hereto marked "Stipulation Exhibit 3".

ELEVENTH: In or about the month of January, 1940, the petitioner, pursuant to said plan of reorganization, acquired the assets of said Reo Motor Car Company, the name of which had been changed to Reo Land Company.

TWELFTH: Included among the assets acquired by the petitioner, as stated in paragraph Eleventh herein, were all of the shares of stock of Reo Sales Corporation. Said Reo Sales Corporation, a corporation, was organized under

the laws of Michigan on June 6, 1923. In July 1923 said Reo Motor Car Company acquired all of the stock of said Reo Sales Corporation. At all times thereafter, until the dissolution of said Reo Sales Corporation as described in paragraph Fourteenth, all of said stock was owned directly by said Reo Motor Car Company or by the petitioner. No other stock of said Reo Sales Corporation was at any time issued.

THIRTEENTH: More than 90% of the aggregate of the gross income of said Reo Sales Corporation for all taxable years was from sources other than royalties, rents, dividends, interest, annuities or gains from sales or exchanges of stocks and securities.

FOURTEENTH: During the calendar year 1941 said Reo Sales Corporation was dissolved. During the calendar year 1941 and as of February 1, 1941, all of its assets, subject to all of its liabilities, were transferred to the Petitioner. The net value of said assets was $1,048,219.95. On February 1, 1941, said Reo Sales Corporation was indebted to the Petitioner in the sum of $1,263,707.57.

FIFTEENTH: The adjusted basis to the petitioner for determining gain or loss from the sale or other disposition of said stock of said Reo Sales Corporation was $1,551,90[illegible].79.

SIXTEENTH: Said stock of said Reo Sales Corporation in the hands of the petitioner was a capital asset within the meaning of, and for the purposes of, section 23(g)(2) of the Internal Revenue Code prior to the addition to said section 23(g), by section 123 of the Revenue Act of 1942, of paragraph (4) of said section 23(g). The loss, if any,

sustained by the petitioner on the dissolution of said Reo Sales Corporation was not compensated for by insurance or otherwise. Said loss, if any, was a long term capital loss under the law applicable to the taxable year ended December 31, 1941.

SEVENTEENTH: For the taxable year ended December 31, 1941, the total deductions (not including any deduction with respect to said stock of said Reo Sales Corporation) which were allowable to and were allowed petitioner by Chapter 1 of the Internal Revenue Code amounted to $2,215,727.08.

EIGHTEENTH: Included among the deductions specified in paragraph Seventeenth was one for a bad debt representing the difference ($215,487.62) between the amount ($1,263,707.57) of the indebtedness of said Reo Sales Corporation to the petitioner on February 1, 1941, as stated in paragraph Fourteenth herein, and the net value ($1,048,219.95) of the assets received by the petitioner, as stated in paragraph Fourteenth herein.

NINETEENTH: The deductions described in paragraph Seventeenth herein do not include any deduction for depletion.

TWENTIETH: The deductions described in paragraph Seventeenth herein do not include a net operating loss deduction.

TWENTY-FIRST: No tax imposed by subchapter E of Chapter 2 of the Internal Revenue Code was paid or accrued

by the petitioner within the taxable year ended December 31, 1941.

TWENTY-SECOND: For the taxable year ended December 31, 1941, the gross income of the petitioner was two million, five hundred seventy-three thousand, two hundred fifty-nine dollars, eighty-nine cents ($2,573,259.89). The petitioner realized no capital gains, either long term or short term, in said taxable year ended December 31, 1941.

TWENTY-THIRD: During the taxable year ended December 31, 1941, the petitioner received no interest which was wholly exempt from the taxes imposed by Chapter 1 of the Internal Revenue Code.

TWENTY-FOURTH: For the taxable year ended December 31, 1942, the net income of the petitioner, without the allowance of a net operating loss deduction, was one million, nine hundred twenty-six thousand, one hundred thirty-six dollars, thirty-four cents ($1,926,136.34).

TWENTY-FIFTH: In the computation of the net income described in paragraph Twenty-fourth herein no deduction for depletion was allowed.

TWENTY-SIXTH: In the taxable year ended December 31, 1942, the petitioner received no interest which was wholly exempt from the taxes imposed by Chapter 1 of the Internal Revenue Code. In said taxable year, petitioner received no interest for which a credit is provided in section 26(a) of the Internal Revenue Code.

TWENTY-SEVENTH: In the taxable year ended December 31, 1942, the petitioner realized no gains and sustained no losses from sales or exchanges of capital assets.

Stipulation of Facts

TWENTY-EIGHTH: For the taxable year ended December 31, 1942, the normal tax net income of the petitioner, computed without any net operating loss deduction and without regard to the credit provided in section 26(e) of the Internal Revenue Code, was one million, nine hundred twenty-six thousand, one hundred two dollars, thirty-four cents ($1,926,102.34) as follows:

Net income per paragraph Twenty-fourth herein		$1,926,136.34
MINUS the credit provided in section 26(a) of the Internal Revenue Code relating to interest on certain obligations of the United States and Government corporations		None
Adjusted net income		$1,926,136.34
MINUS:		
The credit for income subject to the tax imposed by subchapter E of Chapter 2 of the Internal Revenue Code provided in section 26(e) of the Internal Revenue Code	None	
The credit for dividends received provided in section 26(b) of the Internal Revenue Code	$34.00	34.00
Normal Tax Net Income		$1,926,102.34

TWENTY-NINTH: In the computation of petitioner's net income for the taxable year ended December 31, 1942, upon the basis of which the asserted deficiency was determined, respondent did not allow any deduction from petitioner's gross income under section 23(s) of the Internal Revenue Code.

Stipulation of Facts

THIRTIETH: For the taxable year ended December 31, 1942, the adjusted excess profits tax net income of the petitioner, computed without any net operating loss deduction and without the net operating loss deduction adjustment provided in section 711(a)(2)(L) of the Internal Revenue Code, was as follows:

Normal tax net income per paragraph Twenty-eighth herein		$1,926,102.34
Less: Adjustment for dividends pursuant to section 711(a)(2)(A) of the Internal Revenue Code	$ 44,260.00	
Less: Credit deducted in paragraph Twenty-eighth	34.00	44,226.00
		$1,881,876.34
PLUS: Interest adjustment pursuant to section 711(a)(2)(B) of the Internal Revenue Code		23,076.45
		$1,904,952.79
Less: Abnormal income		8,185.44
Excess profits Net Income		$1,896,767.35
Less:		
Specific exemption	$ 5,000.00	
Excess profits credit	615,257.61	
Unused excess profits credit adjustment	978,004.03	$1,578,261.64
Adjusted Excess Profits Net Income		$ 298,505.71

THIRTY-FIRST: The excess profits credit of the petitioner for each of the taxable years ended December 31, 1941 and December 31, 1942 was computed under section 714 of the Internal Revenue Code.

THIRTY-SECOND: The total amount of dividends received by the petitioner in the taxable year ended December 31, 1942, not including any dividends (actual or constructive) on stock of foreign personal holding companies or any dividends on stock which was not a capital asset, was $44,260.00.

THIRTY-THIRD: Included among the deductions specified in paragraph Seventeenth was one for interest amounting to $24,417.05, of which $23,985.64 represented interest on the indebtedness included in the daily amounts of borrowed capital used in the determination of the petitioner's invested capital for the taxable year ended December 31, 1941.

THIRTY-FOURTH: The total deductions described in paragraph Seventeenth herein (without regard to any deduction with respect to said stock of said Reo Sales Corporation) in the amount of $2,215,727.08 do not include any losses from sales or exchanges of capital assets.

THIRTY-FIFTH: The principal trade or business of the petitioner is, and of said Reo Motor Car Company was, the manufacture and sale of motor vehicles. Said Reo Sales

Corporation, during the entire period of its existence, was a sales agent for the sale of the products of said Reo Motor Car Company and of the petitioner.

THIRTY-SIXTH: All exhibits annexed hereto and made a part hereof shall be deemed to be petitioner's exhibits, and respondent shall not be deemed to have stipulated to anything which appears in said exhibits unless expressly so stated in this stipulation.

THIRTY-SEVENTH: Nothing herein contained shall prejudice the right of either the petitioner or the respondent to contest the decision entered by this Court in this proceeding, pursuant to the statutes in such cases made and provided.

Dated: January 10, 1946.

JAMES O. WYNN
James O. Wynn
Of Counsel for the Petitioner

J. P. WENCHEL
PMC
J. P. Wenchel
Chief Counsel for the Bureau
of Internal Revenue.

EXHIBIT 1

UNITED STATES OF AMERICA
THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of the REO MOTOR CAR COMPANY, A Michigan Corporation, *Debtor.*	In Proceedings for Corporate Reorganization No. 24,816.

Trustee's Fourth Amended Plan of Reorganization

I. PREFERRED CREDITORS

This Plan shall not affect the claims of any preferred creditors, and the same shall be assumed and paid by the new corporation as provided by the terms of such indebtedness. All taxes are being paid by the Trustee as they become due and there are no delinquent taxes. All labor claims are being paid currently and it is not believed that there are any claims which will be entitled to preference or priority.

II. SECURED CREDITORS

This Plan shall not affect the claims of any secured creditors, and the same shall be assumed and paid by the new corporation as provided by the terms of such indebtedness. The American State Savings Bank of Lansing, Michigan, is the only secured creditor, having a claim as of August 14, 1939, of about $9,037.67 on a note for a loan

to the Debtor to make improvements to secure the State of Michigan as a tenant. The Bank holds an assignment of the obligation of the Michigan State Board of Auditors to pay the Debtor the sum of $962.40 per month, as a reimbursement for improvements, and $750.00 per month as rental of premises at 230 North Grand Avenue, Lansing, Michigan, until August 1, 1940. The first sum will pay the loan in full at its maturity, and the assignee is permitting the Debtor to receive the $750.00 monthly rental.

III. Unsecured Creditors

A. Unsecured creditors shall receive cash at the times hereinafter specified for the principal amount of their allowed claims, together with interest at the rate of 5 per cent per annum from and after six months after the confirmation of the Plan, upon such part of their allowed claims as shall then remain unpaid.

B. Approximately 55 claims have been filed, amounting in the aggregate to $84,480.08 based upon purchase orders issued by the Debtor on or before December 16, 1938, but upon which deliveries have not been completed. Such claims are hereinafter referred to as "commitment claims". Such claims have been checked by Trustee and for the most part approved. Such "commitment claims" shall be allowed as proved, except as the Trustee or other proper party shall, before October 9, 1939, file specific objections to their allowance. Claims on which objections may be filed shall be settled by negotiation by Trustee with the Creditor, and in case of failure to agree shall be treated as provided by Section 57d of the Bankruptcy Act. Such claims shall be classified as to amount and paid as otherwise herein provided, unless the new corporation shall

certify to the court that it intends to order out and use specific parts or all of the material covered by such purchase orders (and in cases where specific parts but not all of the material is covered by the new corporation's certificate, such claims shall be paid as to the material not certified), and unless it shall order out and pay for fifty percent (50%) of the material specified in each instance within six (6) months from the date of Confirmation of the Plan, and unless it shall order out and pay for the remaining fifty percent (50%) of the material so specified within eight (8) months after date of such confirmation. In the event that some but not all of the material specifically certified is so ordered out and paid for, the "commitment" claim to be paid as such shall be adjusted so as to take into account such material as has been either ordered and paid for or ordered out and delivered or prepared for delivery to the new corporation.

C. Unsecured creditors (except "commitment" creditors as to whose claims the new corporation has made the certificate specified in paragraph B above), with allowed claims of $500.00 or under, of which there may be approximately 610 in number with claims totaling approximately $58,000.00, shall upon the effective date of operation of the Plan, be paid in full from the cash or the proceeds of the sale of any property described in the succeeding paragraph D. Any unsecured creditor (except "commitment" creditors above in this paragraph excepted), whose allowed claim exceeds $500.00, shall be entitled to be paid $500.00 in full if such creditor shall file with the Trustee a waiver of that part of its claim in excess of $500.00.

D. Unsecured creditors with allowed claims in excess of $500.00 (exclusive of such as may waive the excess over

$500.00), shall, subject to the provision hereinafter made for payment by the new corporation, be paid out of the proceeds of liquidation of the following assets which shall be segregated, and shall not be mortgaged or otherwise encumbered by the Trustee or by the new corporation for the purpose of securing a loan to the Debtor or for any other purpose, except for the purpose of raising money for the payment in full of unsecured creditors as hereinafter permitted, nor shall any obligation of the new corporation be entitled to look to such segregated assets for payment until unsecured and "commitment" creditors for whose payment they are segregated are paid in full, provided, however, a secondary lien may be given thereon to the Reconstruction Finance Corporation making the loan of approximately two million dollars for working capital, which lien shall become a first lien after payment of creditors in full and any mortgage placed thereon for the purpose of securing cash to pay said creditors. At the present time there are no recent appraisals of these assets, but estimated values are given, being based in some cases upon recent offers made therefor.

Balance of claim of the Debtor against the Receiver of the Capital National Bank of Lansing $762,539.77

Seventy per cent of the original claim has been paid by the bank receiver and a dividend of ten per cent or about $254,000.00 was paid about August 1, 1939, and is now held by the Trustee but is to be made available for the payment of creditors.

Truck plant at the corner of Mt. Hope and Washington Avenues, Lansing, Michigan, comprising 19.7 acres of land with buildings $225,000.00

Business building at 318 E. Michigan Avenue, Lansing, Michigan, formerly used by the Lansing Branch of the Reo Sales Corporation	$ 35,000.00
Business building at 5710 North Broadway, Chicago, Illinois	$ 75,000.00
Business building at 2272 E. Jefferson Avenue, Detroit, Michigan	$125,000.00
Machinery which in the opinion of the Trustee will not be required for any further operations of the Debtor, and which shall in the judgment of the Trustee and the Creditors' Committee have a present fair market value of	$300,000.00

Prior to the discharge of the Trustee the aforesaid assets may be liquidated or disposed of by the Trustee subject to the approval of the Court and the proceeds held intact for payment by Trustee pro rata to unsecured creditors in the manner herein provided. Upon the effective date of operation of this Plan the Trustee shall forthwith assign, convey and deliver all of the aforesaid assets which have not been disposed of, to a Trustee hereinafter referred to as Indenture Trustee, who shall be designated by the Judge of this Court, who shall liquidate the balance of such assets pursuant to the provisions of a trust indenture to be approved by the Court. The Court shall retain jurisdiction over said Indenture Trustee and may direct his actions either on his own motion or upon petition of any interested party. The expense incident to vesting title to said assets in the Indenture Trustee shall be paid by the Trustee of Debtor corporation, or if he be discharged, by the new corporation. All expense incurred in the handling

of the segregated assets, and all taxes and assessments against the same, prior to the discharge of the Trustee, shall be paid by the Trustee out of other assets of the Debtor, but thereafter all such expenses in excess of the income from the segregated assets shall be paid by the new corporation. As funds are available from the liquidation of the segregated assets, the same shall be distributed pro rata to all of said unsecured creditors as allowed by the Court, with a like pro rata share retained for the payment of such "commitment" creditors as may become entitled to the payment of their liquidated claims as hereinbefore provided. Whenever sufficient funds have accumulated for a ten percent dividend, a distribution shall be made. Any surplus remaining after the payment in full of such unsecured and "commitment" creditors, as provided herein, whether in the form of cash or unliquidated assets, shall become the property of the new corporation and shall be reassigned to it. In case said segregated assets shall not liquidate for a sum sufficient to pay all such unsecured and "commitment" creditors, or in the event that such unsecured and "commitment" creditors are not paid in full within one year after the confirmation of the Plan, the new corporation shall pay any balance due within three months after liquidation of the segregated assets has been completed, or at the expiration of one year after the confirmation of the Plan, whichever event shall first occur, such unsecured and "commitment" creditors becoming as to the unpaid balance of their claims unsecured creditors of the new corporation, save for the security of the segregated assets. If the new corporation shall out of its funds, either directly or indirectly, purchase any claim, such claim shall cease to be secured by the segregated assets. Noth-

ing herein contained shall be construed to indicate that the unsecured creditors shall have any lien upon any assets of the Debtor, other than said segregated assets, and the Debtor shall at all times be free to give clear title thereto in any grant, conveyance or mortgage. Either the Trustee or the Indenture Trustee may, with the approval of the Court, mortgage or pledge any of the segregated assets and use the proceeds of loans thus obtained for the payment of such unsecured and "commitment" creditors, provided that the proceeds are sufficient to make payment in full. The debt thus created shall be assumed by the new corporation.

E. This Plan shall not affect the claims of any unsecured creditors whether filed in the form of absolute or contingent claims, and which have or may hereafter become absolute and are based on indorsement, discount, guaranty indemnity or any other secondary liability arising out of the financing of the sale of the Debtor's products, but the same shall be paid by the new corporation at such times as they become due and according to the terms under which such secondary liabilities were created.

F. This Plan shall not affect the claims of any unsecured creditors arising out of alleged patent licenses and agreements, patent infringement or other circumstances pertaining to patents, which shall not have been finally determined by the time of confirmation of the Plan, but the same shall be as valid and enforceable against the new corporation as they would have been against the Debtor.

G. Any claims within the terms of the last two paragraphs which may be approved by the new corporation or adjudicated by any competent court, shall be a charge

against the segregated assets and shall also be payable out of any assets of the new corporation, any other provisions herein to the contrary notwithstanding. Any such claim coming in as a charge shall take the segregated assets as it finds them and no unsecured creditor whose claim has theretofore been paid either in full or in part shall be under any obligation to make contribution to any claim so coming in.

V. New Corporation

A new corporation shall be organized under the laws of Michigan or any other state selected by the Trustee, with the approval of the Court, which corporation shall have an authorized capital stock of 2,000,000 shares of common stock with a par value of $1.00 per share. The Trustee shall transfer and convey to the new corporation upon its complete organization, but without any warranties or representations whatsoever, all of the right, title and interest in and to all real and personal property, assets and claims of every kind of the Debtor, except the aforesaid segregated assets and the proceeds of the sale thereof, the bank dividend of $254,000.00 and such other cash as Trustee may be directed by the Court to retain to pay the costs and expenses of this proceeding, provided however any part of these items remaining after full payment of creditors' claims shall be assigned to the new corporation.

VI. Stockholders

Stock of the new corporation shall be issued in the same number of shares as stock of the Debtor is issued and outstanding, and same shall be deposited by the new corporation with three Voting Trustees, who have been appointed

by the United States District Court Judge before whom this proceeding is pending—to wit: John W. Miner of Jackson, Michigan, George B. Judson of Detroit, Michigan and Otto C. Seyferth of Muskegon, Michigan. In case of a vacancy in the office of said Voting Trustees the same shall be filled by said Court. The terms and conditions of said voting trust shall be as hereinafter provided. Said Voting Trustees shall issue Voting Trust certificates and same shall be exchanged by the Trustee for the present stock of the Debtor, share for share.

1. Voting Trust certificates shall be signed by the Voting Trustees, or their duly authorized agent, and issued in a form approved by the Voting Trustees, which shall entitle such certificates to be listed on the New York Stock Exchange, for the number of shares of stock deposited, which shall contain the terms and conditions of said Voting Trust. Such certificates shall be assignable by transfer upon the books of the Voting Trustees in person or by power of attorney, and a transferee by accepting a new certificate shall be deemed to have consented to the terms and conditions of the Voting Trust agreement.

2. The Voting Trustees shall keep a record of stock deposited with them and of Voting Trust certificates issued and transferred by them and may appoint an agent or agents for such purpose.

3. In case any Voting Trust certificate shall be lost or destroyed, a new certificate in lieu thereof shall be issued by the Voting Trustees to the owner of such lost or destroyed certificate or his assignee upon satisfactory proof of such loss or destruction by affi-

davit and deposit with the Voting Trustees of indemnity for the period of the Voting Trust double the value of such lost or destroyed certificate as fixed by the Voting Trustees.

4. The legal title to all stock issued in the name of the Voting Trustees shall remain vested in the Voting Trustees, for the purpose of this Trust and during the continuance thereof, and they shall not sell, transfer or assign the same, except as herein provided. Any cash dividends received by said Voting Trustees shall be paid by them at once to the holders of Voting Trust Certificates as their respective interests may from time to time appear. The Voting Trustees may treat the registered holder of Voting Trust certificates as the owner thereof for all purposes.

5. The Voting Trustees shall vote such stock as may be issued to them at each stockholders' meeting during the life of this Trust. The decision of a majority of the Voting Trustees shall control on all questions to be by them determined. In voting such stock they shall exercise their best judgment to select suitable directors to the end that the affairs of the Corporation shall be properly managed and the interests of stockholders protected, and in voting on other matters which may come before them they shall exercise like judgment. They shall have all of the rights and privileges which are given to stockholders under the laws of the State of Michigan or of such states as the corporation may be incorporated in and the Articles of Incorporation and By-Laws of said corporation including the right to call meetings of stock-

holders, to inspect the books and records of the corporation, and to vote for liquidation, consolidation or merger of the corporation. At least one member of the Voting Trustees shall be selected as a member of the Board of Directors. The Court having jurisdiction of this matter shall approve the first Board of Directors selected by the Voting Trustees.

6. Each Voting Trustee and any agent of the Voting Trustees shall be liable for his own individual malfeasance but not otherwise, and shall have no liability except to exercise his best judgment in the performance of his duties. He may resign at any time without first securing the permisison of the Court making the appointment. The Voting Trustees shall not be subject to any stockholders' liability by reason of holding any stock in trust

7. Reasonable compensation to be fixed by this Court and any expense incurred by the Voting Trustees for the issuance of Voting Trust certificates, transfer taxes on the transfer of stock to or from the Trustees, counsel fees, or for other purposes necessary to the proper carrying out of the functions of the Voting Trust shall be paid by the new corporation.

8. A Voting Trustee selected to fill a vacancy shall have, without a formal transfer of the stock so held in trust, all the powers of a Voting Trustee as though originally so designated. The trust hereby created shall vest in the Voting Trustees named as provided herein and their successors in office.

9. The trust hereby created shall continue until the Reconstruction Finance Corporation loan herein pro-

vided for shall have been fully repaid, but not later than October 1, 1949, at which time the Voting Trustees shall assign to the then owners of Voting Trust certificates the amount of stock to which each such owner shall be then entitled, upon the surrender of his Voting Trust certificates.

VII. Financing and Operations

New financing for the purpose of providing working capital for the Debtor has been secured in the amount of $2,000,000.00 in the form of a conditional commitment by the Reconstruction Finance Corporation. The principal provisions of the Reconstruction Finance Corporation commitment are as follows:

1. Maturity: Six years.
2. Principal payable: $24,000 monthly, beginning six months after date of disbursement, together with additional annual payments in amounts equal to 50% of Applicant's net earnings, after giving effect to payment of the installments of principal required to be made on account of the loan for the fiscal year with respect to which such net earnings are to be computed.
3. Collateral:
   a. First mortgage on Applicant's main plant and all the real and personal property which is not to be liquidated for the benefit of creditors; (Does not include cash, receivables and productive inventory used in operations by the reorganized company);

b. The assets referred to in paragraph 3-a hereof which are to be liquidated for the benefit of creditors, subordinate however to claims of creditors aggregating not in excess of $535,000;

c. Mortgage on inventory of service parts of Applicant of an aggregate value of not less than $200,000;

d. Applicant's interest in and to the contract with Inter-City Coach Line, Lansing, Michigan, represented as having an unpaid balance of approximately $238,000 as of March 31, 1939;

e. Pledge of all capital stock of subsidiaries;

f. Such securities, land contracts receivable, mortgages receivable and other real estate or interests therein owned by Applicant but not used in Applicant's business.

4. Proceeds of loan to be used as follows:

a. Re-arranging plant $140,000.

b. Tooling and engineering $90,000.

c. Balance for working capital.

5. Management to be satisfactory to Agency Manager prior to disbursement, together with agreement of Applicant that its management will remain satisfactory to this Corporation during the life of the loan with provision that in the event Applicant fails to make satisfactory adjustments in its management after written request of this Corporation, the maturity of the note may be accelerated.

6. Applicant's plan of reorganization and all amendments and modifications thereto to be satisfactory to this Corporation, and the plan satisfactory to this Corporation, as aforesaid, which is finally approved by the Court having jurisdiction thereof, to be also approved by the Securities and Exchange Commission.

7. All fees and expenses incident to Applicant's reorganization to be approved by this Corporation prior to any disbursement on account of the loan.

8. Applicant to agree to deliver, at the request of this Corporation, in lieu of the note initially evidencing the loan, mortgage bonds of Applicant in such form as shall be satisfactory to this Corporation, Applicant to take all necessary action and pay all expenses incidental thereto.

VIII. Reorganization Fees and Expenses

All costs and expenses of administration and other allowances which may be approved or made by the Judge in the reorganization proceedings shall be paid in cash by the Trustee out of assets in his hands, or by the new corporation, as the Court shall direct, subject to the provisions of Chapter X of the Bankruptcy Act.

IX. Consents to Plan

Inasmuch as there are only a few classes of creditors and a single class of stockholders which will be affected by the Plan of Reorganization, the Plan makes no provision

for any class of creditors or stockholders which does not accept the Plan by the majorities provided by Chapter X of the Bankruptcy Act. If unsecured creditors holding two-thirds in amount of the claims filed and allowed of each class and a majority of stockholders who have filed proofs of interest of their stockholdings do not accept this Plan, with such amendments as may be properly made, the Trustee will then apply to the Court for further instructions on the reorganization of the Debtor.

X. United States Claims

The new corporation shall assume and agree to pay in full all tax liabilities owing by the Debtor or the Trustee to the United States of America. The claims of the United States of America shall have the same priority and preference over claims of other creditors of the new corporation with respect to the assets thereof, as would lie against the assets of the Debtor or the Trustees, had these proceedings not intervened, and the United States of America is hereby granted the same remedies against the new corporation and its assets with regard to the collection of such liabilities as it had against the Debtor. All statutes of limitation upon the collection of such claims shall be suspended during the time these proceedings are pending. Subject to its approval the Court shall retain jurisdiction over the assets herein dealt with and over any and all persons, firms or corporations to whom said assets may be transferred, and over all parties appearing herein for the purpose of carrying out and giving effect to any and all provisions of the Plan and the decree confirming the same in so far as said Plan affects and applies to tax claims of the United States of America.

Stipulation of Facts

XI. Consummation of Plan

All proceedings necessary to the consummation of the Plan of Reorganization and the delivery of all securities provided for under the Plan, upon entry of the order approving the Plan, pursuant to the application filed under Chapter X of the Bankruptcy Act, shall be under the supervision and direction of the Trustee and the Court in charge of these proceedings. This Plan shall be finally consummated not later than January 1, 1940, or such later date as may be fixed by the Court.

XII. Default

The final decree in these proceedings shall contain an express provision that the Court expressly reserves jurisdiction over said new corporation upon a showing by any party in interest to the Court that substantial default in the performance of the obligations incurred in said Plan has been made by said new corporation or any of its officers or directors, or that the rights of any party in interest are or may be adversely affected by any action or proposed action of said new corporation or any of its officers or directors, and reserves jurisdiction to make such other and further orders from time to time as it may deem advisable, proper and necessary to fully effectuate such Plan of Reorganization and to fully protect the rights of all parties in interest.

Respectfully submitted,

Theodore I. Fry, Trustee

By Shields, Ballard, Jennings & Taber

Attorneys for Trustee

Lansing, Michigan

Dated: September 20, 1939.

EXHIBIT 2

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of the REO MOTOR CAR COMPANY, A Michigan Corporation, *Debtor.*	In Proceedings for Corporate Reorganization. No. 24,816.

Order Confirming Plan of Reorganization

At a session of said Court held at the Federal Building in the City of Detroit in said District, on the 12 day of December, 1939.

Present: Honorable ARTHUR F. LEDERLE, District Judge.

The adjourned hearing for the consideration of the confirmation of the Plan of Reorganization and of such objections as might be made to such confirmation, having come on to be heard pursuant to the order of this Court heretofore made and entered in these proceedings, and it appearing to the Court that due and proper notice to all parties in interest has been given in accordance with the National Bankruptcy laws and the Order of this Court, and attorneys for the Trustee, Debtor corporation, Creditors' Committee, Securities and Exchange Commission, and others representing various individual creditors and stockholders, including Thomas Campbell, who appeared herein in pro-

pria persona being in Court and no objections to the confirmation being raised before this Court, and it further appearing from proofs offered in open Court that the requisite number of acceptances from creditors and stockholders to the Trustees Amended Plan of Reorganization heretofore approved by Order of this Court on October 9th, 1939, had been received and filed with the Trustee in accordance with the Order of this Court:

Therefore on motion of Shields, Ballard, Jennings & Taber, Attorneys for the Trustee, the Court does hereby ORDER that:

1. The Trustees Fourth Amended Plan of Reorganization, heretofore approved on October 9th, 1939, is hereby approved and confirmed, as herein modified.

2. Paragraph VIII of said Plan is modified so as to provide that all costs and expenses of administration and other allowances, which may be approved or made by the Court in the reorganization proceedings shall be paid from the liquidation of the assets segregated for unsecured creditors in paragraph III of said Plan of Reorganization, after the full payment of said creditors as therein provided.

3. The Trustee is authorized to do all things and acts necessary to consummate said Plan of Reorganization as herein approved and confirmed and to put same into operation.

4. The provisions of the Plan of Reorganization and of this Order shall be binding upon (1) the Debtor;

(2) all stockholders of the Debtor, including those who have not, as well as those who have, accepted the Plan; and (3) all creditors of the Debtor, secured or unsecured, whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted the Plan.

5. The Trustee shall report in writing to this Court on or before the 5th day of January, 1940, all acts and things done and performed by him in the execution and confirmation of said Plan of Reorganization, hereby confirmed by the Court, and a hearing on such report and the entry of such order as may be deemed necessary by this Court shall be held on said date before this Court at eleven o'clock in the forenoon of said day.

6. Jurisdiction is reserved in the Court to supervise and control the putting into effect and carrying out of the Plan, including the giving of such directions, authorizations or approval as the Court may determine from time to time to be necessary and proper, in connection with carrying out the terms and provisions of said Plan of Reorganization approved and confirmed herein and of this Order, and for properly terminating this cause.

ARTHUR F. LEDERLE
District Judge.

EXHIBIT 3

UNITED STATES OF AMERICA

THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

In the Matter of the REO MOTOR CAR COMPANY, A Michigan Corporation, *Debtor.*	In Proceedings for Corporate Reorganization. No. 24,816.

Order Amending Paragraph III, Subparagraph D of the Plan of Reorganization Approved and Confirmed by the Court

At a session of said Court held at the Federal Building in the City of Detroit in said District, on the 5th day of January, 1940.

Present: Honorable ARTHUR F. LEDERLE, District Judge.

On reading and filing the report and petition of Theodore I. Fry, Trustee of the Debtor herein, reporting the progress made in carrying out the Plan of Reorganization, heretofore confirmed by the Court on December 21, 1939, and proposing a certain amendment to paragraph III, subparagraph D of the Trustee's Fourth Amended Plan of Reorganization so approved and confirmed by the Court, which in effect provides that instead of the Court appointing a Trustee to liquidate the segregated assets for the benefit of unsecured creditors, as provided in said Plan of Reorganization, that

said assets shall be assigned to the new corporation, Reo Motors, Inc., for the purpose of liquidating same to pay the balance due to creditors, a portion having been paid by the Trustee, and after the creditors are paid, to pay the sums to be allowed by the Court as expenses and fees to persons entitled thereto in this reorganization proceeding; and it appearing to the Court that the proposed alteration or modification does not materially and adversely affect the interest of creditors and stockholders;

THEREFORE, IT IS ORDERED that the Trustee's Fourth Amended Plan of Reorganization, paragraph III, subparagraph D, be and the same is hereby amended as follows:

"Unsecured creditors with allowed claims in excess of $500.00, exclusive of such as may waive the excess over $500.00, shall, subject to the provision hereinafter made for payment by the new corporation (Reo Motors, Inc.) be paid out of the proceeds of liquidation of the following assets which shall be segregated and shall not be mortgaged or otherwise encumbered by the Trustee or by the new corporation, Reo Motors, Inc., for the purpose of securing a loan to the Debtor or for any other purpose except for the purpose of raising money for the payment in full, first, of unsecured creditors and secondly, of sums to be allowed by the Court as expenses and fees to persons entitled thereto under the provisions of Chapter X of the National Bankruptcy Act as hereinafter permitted, nor shall any obligation of the new corporation be entitled to look to such segregated assets for payment until said unsecured and commitment creditors and persons receiving allowances for fees and expenses allowed or to be allowed by the Court as above set forth for whose payment they are segregated

are paid in full, provided, however, a secondary lien may be given thereon to the Reconstruction Finance Corporation making the loan of approximately two million dollars for working capital, which lien shall become a first lien after payment of the above described obligations in full and any mortgage placed thereon for the purpose of securing cash to pay said obligations. At the present time there are no recent appraisals of these assets, but estimated values are given, being based in some cases upon recent offers made therefor.

Balance of claim of the Debtor against the Receiver of the Capital National Bank of Lansing $762,539.77

Seventy per cent of the original claim has been paid by the bank receiver and a dividend of ten per cent or about $254,000.00 was paid about August 1, 1939, and is now held by the Trustee but is to be made available for the payment of creditors

Truck plant at the corner of Mt. Hope and Washington Avenues, Lansing, Michigan, comprising 19.7 acres of land with buildings, said property being described as, "Commencing at intersection of centers of Mt. Hope Ave. and Eaton Rapids road and running thence W. in center of Mt. Hope Ave. 403.5 feet, thence S. Wly. on E. line of N. Y. C. R. R. right of way 1,494 feet, thence E. parallel with Mt. Hope Ave. 1,058 feet to center of Eaton Rapids road, thence along center of road 1,046 feet to beginning, being part of the N.W. ¼ of Section 28, T. 4 N., R. 2 W., City of Lansing, except a triangular piece of land described as follows: Commencing at a point on the South

street line of Mt. Hope Avenue 21 feet West of the intersection of said South Street line with the Westerly street line of Washington Avenue, thence East along said South street line of Mt. Hope Avenue to said intersection with Westerly street line of Washington Avenue, thence Southwesterly along Westerly Street line of Washington Avenue 137 feet, thence Northeasterly to point of beginning, for street purposes only" $225,000.00

Business building at 318 E. Michigan Avenue, Lansing, Michigan, formerly used by the Lansing Branch of Reo Sales Corporation, said property being described as, "Lots 3, 4 and 5, Block 2, Downer's Subdivision of Lot 7, Block 245 in said City of Lansing, according to the plat thereof, together with all rights in party wall now erected or to be erected on West 16" of Lot 2 and adjoining above described lot on East side thereof, which rights are fully set forth in deed given by Rollo K. Bryan and wife to John P. Thoman, dated Sept. 20, 1904 and recorded in Ingham County Register's office in Liber 152 of Deeds, page 145; also ½ foot of land and wall thereon off the East side and running full length of Lot 6 in said Block 2 of Downer's Subdivision on Block 245 in said City of Lansing" ..... $ 35,000.00

Business building at 5710 North Broadway, Chicago, Illinois, said property being described as, "Lots 12, 13 and 14, Block 8, Carrinduff's Addition to Edgewater, being a subdivision of the E. ½ of S. W. ¼ of Sec. 5, T. 40 N., R. 14 E. of third principal meridian, together with the improvements thereon" ..... $ 75,000.00

Business building at 2272 E. Jefferson Avenue, Detroit, Michigan, said property being described as, "E. 100 feet of W. 200 feet of that part of James Campau Farm between the South line of Jefferson Avenue and the North line of Franklin Street, City of Detroit, Wayne County, Michigan"	$125,000.00
Machinery which in the opinion of the Trustee will not be required for any further operations of the Debtor, and which shall in the judgment of the Trustee and the Creditors' Committee have a present fair market value of	$300,000.00

Prior to the discharge of the Trustee, the aforesaid assets may be liquidated or disposed of by the Trustee, subject to the approval of the Court and the proceeds held intact for payment by the Trustee prorata, first, to unsecured creditors and secondly, to the persons to whom allowances and expenses have been granted by the Court in the manner herein provided. Upon the effective date of operation of this Plan, the Trustee shall forthwith assign, convey and deliver all of the aforesaid assets which have not been disposed of to the new corporation, Reo Motors, Inc., which shall liquidate the balance of such assets for the purposes herein set forth. The expense incident to vesting title to said assets in the new corporation shall be paid by the Trustee of Debtor corporation, or, if he be discharged, by the new corporation. All expense incurred in the handling of the segregated assets and all taxes and assessments against the same prior to the discharge of the Trustee shall be paid by the Trustee out of other assets of the Debtor, but thereafter all such expenses in excess of the income from the segregated assets shall be paid by the

new corporation. As funds are available from the liquidation of the segregated assets, the same shall be distributed prorata to all of said unsecured creditors as allowed by the Court, with a like prorata share retained for the payment of such commitment creditors as may become entitled to the payment of their liquidated claims as hereinbefore provided. Whenever sufficient funds have accumulated for a ten percent dividend, a distribution shall be made. Any surplus remaining after the payment in full of such unsecured and commitment creditors and the expenses and allowances authorized by the Court, as provided herein, whether in the form of cash or unliquidated assets, shall become the property of the new corporation. In case said segregated assets shall not liquidate for a sum sufficient to pay all such unsecured and commitment creditors and the expenses and allowances so allowed by the Court, or in the event that such unsecured and commitment creditors are not paid in full within one year after the confirmation of the Plan, the new corporation shall pay any balance due within three months after liquidation of the segregated assets has been completed or at the expiration of one year after the confirmation of the Plan, whichever event shall first occur, and such unsecured and commitment creditors and such persons to whom allowances and expenses have been granted by the Court shall become, as to the unpaid

balance of their claims, unsecured creditors of the new corporation, save for the security of the segregated assets. If the new corporation shall out of its funds, either directly or indirectly, purchase any claim, such claim shall cease to be secured by the segregated assets. Nothing herein contained shall be construed to indicate that the unsecured creditors shall have any lien upon any assets of the Debtor other than said segregated assets and the Debtor shall at all times be free to give clear title thereto in any grant, conveyance or mortgage. The Trustee or the new corporation may mortgage or pledge any of the segregated assets and use the proceeds of loans thus obtained for the payment of such unsecured and commitment creditors and the persons to whom such allowances and expenses have been granted by the Court, provided that the proceeds are sufficient to make payment in full. The debt thus created shall be assumed by the new corporation."

IT IS FURTHER ORDERED that all matters herein and for the making of a further report to the Court by the Trustee of the acts and things done and performed by him in the execution and confirmation of said Plan of Reorganization, be adjourned to January 15, 1940, at eleven o'clock in the forenoon of said day.

ARTHUR F. LEDERLE
District Judge.

Excerpts from the Transcript of Testimony.

EXCERPTS FROM

OFFICIAL REPORT OF PROCEEDINGS

BEFORE

THE TAX COURT OF THE UNITED STATES

REO MOTORS, INCORPORATED, *Petitioner*, *vs.* COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DOCKET No. 6409

HEARING AT Washington, D. C.

DATE January 10, 1946.

Pages 1 to 64

(Opening Statement on Behalf of the Respondent by Mr. Raum.)

Mr. Raum: If the Court please, the petitioner has correctly stated the issues.

In order to make things perfectly clear, it is the respondent's understanding that all the issues raised in either the original petition or the amended petition have been waived except as to the net operating loss deduction for 1942, growing out of an asserted net operating loss for 1941.

It is respondent's additional understanding that despite both the original petition and the amended petition, no net operating loss for 1941 in excess of that amount which

grows out of the deduction stipulated in paragraph 17 of the stipulation, any additional allowable deduction with respect to the stock of the Reo Sales Corporation—that is, petitioner's subsidiary—and the gross income stipulated in paragraph 22 of the stipulation, will be claimed by the petitioner. It is understood that no loss in excess of a loss that might grow out of those three factors will be claimed by the petitioner. That is, any excess has been abandoned and the Court will give effect to abandonment of any excess loss in the proceeding.

Mr. Wynn: That is correct.

Mr. Raum: Outside of that I believe Mr. Wynn has correctly stated the issue in the case.

The Court: You may file your stipulation.

Mr. Wynn: I hand the Clerk original and copy of the Stipulation of Facts signed by counsel for both parties.

The Court: The stipulation will be received.

Mr. Raum: There is one thing there, Your Honor, with regard to one page which we found necessary to change this morning. We changed it in ink and we would like permission of the Court to substitute a typewritten page with the interlineation typewritten in.

The Court: You have permission to do so.

I think I will recognize Mr. Wynn.

Mr. Wynn: I think, sir, that while we have stipulated the facts, I better rest for the moment, because the respondent has some returns to introduce.

Mr. Raum: There are several returns we would like to enter, sir.

The Court: All right.

Mr. Raum: If the Court please, I would like to introduce, with the petitioner's approval, photostatic copies of the tax returns so we won't have to withdraw them.

Mr. Wynn: We have no objection.

The Court: All right.

Mr. Raum: I offer in evidence as Respondent's Exhibit A, the Corporation Income and Declared Value Excess Profits Tax Return for Reo Motors, Inc., for the taxable year 1941.

The Court: Do you have any exhibits attached to the stipulation?

Mr. Raum: We have some that are called exhibits, but there is a paragraph in the stipulation which states that all the exhibits attached to the stipulation are petitioner's exhibits and not respondent's exhibits.

The Court: There will be no contradiction to these numbers?

Mr. Raum: No, sir.

The Court: Admitted as Respondent's Exhibit A.

(Corporation Income and Declared Value Excess Profits Tax Return for Reo Motors, Inc., for the taxable year 1941 was received in evidence and marked Respondent's Exhibit A.)

Mr. Raum: I offer in evidence as Respondent's Exhibit B, Corporation Excess Profits Tax Return of Reo Motors, Inc. for the taxable year 1941.

The Court: Admitted.

(Corporation Excess Profits Tax Return of Reo Motors, Inc., for the taxable year 1941 was received in evidence and marked Respondent's Exhibit B.)

Mr. Raum: I offer in evidence as Respondent's Exhibit C, the so-called completed Corporation Income and Declared Value Excess Profits Tax Return of Reo Motors, Inc., for 1942.

The Court: Admitted.

(Corporation Income and Declared Value Excess Profits Tax Return of Reo Motors, Inc., for the taxable year 1942 was received in evidence and marked Respondent's Exhibit C.)

Mr. Raum: I offer in evidence as Respondent's Exhibit D, the amended Corporation Income and Declared Value Excess Profits Tax Return for Reo Motors, Inc., for 1942.

The Court: Admitted.

(Amended Corporation Income and Declared Value Excess Profits Tax Return of Reo Motors, Inc., for the taxable year 1942 was received in evidence and marked Respondent's Exhibit D.)

Mr. Raum: I offer in evidence as Respondent's Exhibit E, the Corporation Excess Profits Tax Return, called a completed return, of Reo Motors, Inc., for 1942.

The Court: Admitted.

(Corporation Excess Profits Tax Return of Reo Motors, Inc., for the taxable year 1942 was received in evidence and marked Respondent's Exhibit E.)

Mr. Raum: I offer in evidence as Respondent's Exhibit F, the amended Corporation Excess Profits Tax Return for the year 1942, for Reo Motors, Inc.

The Court: Admitted.

(Amended Corporation Excess Profits Tax Return of Reo Motors, Inc., for the taxable year 1942, was received in evidence and marked Respondent's Exhibit F.)

(Oral Argument on Behalf of the Petitioner by Mr. Wynn.)

Mr. Wynn: 1941. I beg your pardon, sir.

The facts have been stipulated for any possible adjustment to that income under Section 122(d). There is no adjustment to the gross income.

The only reason we are before you this morning is because of one of the adjustments provided in Section 122(d) with respect to the deductions. Therefore, in paragraph 17 of the stipulation there is some $2,216,000 of agreed deductions—Deductions as to which there is no dispute. In addition thereto there is a deduction which we claim should be allowed of some $1,552,000, resulting from the dissolution of the Reo Sales Corporation in 1941.

The reason that a question arises is because one of these paragraphs in Section 122(d)—There are six of those paragraphs, but we can limit our discussion now to the fourth of those paragraphs. The other five are such that they make no change in the deductions.

Section 122(d)(4) of the Internal Revenue Code, which you will find in the middle of page two on this document I handed you, provides that in computing a net operating loss for 1941, computing the deductions for 1941 for the purpose of a net operating loss for 1941, that those losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of Section 117(b); and as so computed the amount deductible on account a capital loss shall not exceed the amount includible on account of the capital gains.

Now, as applied to the case which your Honor has before you, that section is—First, let me dispose of that reference

to Section 117(b). That has no effect on us because that is the section of the Code which with respect to taxpayers other than corporations permits a deduction to be included at a percentage of gain. That does not apply to corporations, and this taxpayer being a corporation that is not effective. But, the last sentence quoted there, in the middle of page two, does affect us because it provides that a capital loss in 1941 can only be included in the deductions for 1941 for the purposes of Section 122(a) to the extent of the capital gains.

There were no capital gains. Consequently, if the loss from the dissolution of the Reo Sales Corporation was a capital loss we are out of Court. On the other hand, if it was not a capital loss we do have a net operating loss.

EXCERPT FROM OFFICIAL REPORT OF PROCEEDINGS BEFORE THE TAX COURT OF THE UNITED STATES HELD AT WASHINGTON, D. C. JANUARY 10, 1946, PAGE 14 BEGINNING WITH LINE 24 THROUGH PAGE 16 ENDING WITH LINE 4.

However, on page four of the little memorandum I gave Your Honor this morning, I call your attention to paragraph four of Section 23(g), which was added to the Code by Section 123 of the Revenue Act of 1942, applicable to all taxable years beginning after December 31, 1941. In other words, applicable to the taxable year 1942, which is the taxable year Your Honor has before you for the determination of a deduction.

This paragraph (4) provides that for the purposes of Section 23(g)(2), which I have just discussed, the stock

in a corporation which is 95 per cent owned by the taxpayer and where 90 per cent or more of the aggregate of its gross income of the subsiidary for all taxable year has been from sources other than royalties, rents, dividends, interest, annuities, or gains from sales or exchanges of stock and securities, and where the taxpayer is a domestic corporation, that such a stock shall not for the purposes of Section 23(g) (2) be considered a capital asset.

We have stipulated in this case that the taxpayer is a domestic corporation. The petitioner is a domestic corporation. We have stipulated that the stock of the Reo Sales Corporation was wholly owned by the petitioner. We have stipulated that more than 90 per cent of its gross income for all taxable years was from sources other than rents, royalties, dividends, interest, annuities and gains from the sale of stocks and securities.

Consequently, under the Code as it applied to 1942, the year in which we are seeking the deduction under Section 23(s), the loss resulting from the dissolution of Reo Sales Corporation was not a capital asset and we are therefore entitled to a net operating loss deduction for 1942.

COMPLETED RETURN

Form 1120
Treasury Department
Internal Revenue Service

UNITED STATES
CORPORATION INCOME AND DECLARED VALUE EXCESS-PROFITS TAX RETURN 1941
For Calendar Year 1941

11 2 Tatd

for the year beginning _____, 1941, ending _____, 1942

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.
(Name)

South Washington Ave.
(Street and number)

Lansing (Post office) | Ingham (County) | Michigan (State)

Kind of business: Manufacture of motor vehicles

Business group serial number (see instruction N) 100

File Code 607
Serial No. NC 855686
District Michigan
(Collector's stamp)

Cash | Check | M. O.
First Payment
$

Page 1

NORMAL-TAX NET INCOME COMPUTATION

Item and Instruction No.			
	GROSS INCOME		
1.	Gross sales (where inventories are an income-determining factor) $; Less: Returns and allowances $	8,310,943	73
2.	Less: Cost of goods sold. (From Schedule A)	6,090,493	22
3.	Gross profit from sales	2,220,450	51
4.	Gross receipts (where inventories are not an income-determining factor) $		
5.	Less: Cost of operations. (From Schedule B)	-	
6.	Gross profit where inventories are not an income-determining factor	-	
7.	Interest on loans, notes, mortgages, bonds, bank deposits, etc.	20,637	57
8.	(a) Interest on certain obligations of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (5))	-	
	(b) Interest on Treasury Notes of the National Defense Series and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)	-	
9.	Rents	31,048	06
10.	Royalties	-	
11.	(a) Net short-term capital gain. (From Schedule C)		
	(b) Net long-term capital gain (or loss). (From Schedule C)	2,056,548	16
	(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)	25,750	50
12.	Dividends. (From Schedule F)	245	75
13.	Other income. (State nature)	61,718	11
14.	Total income in items 3, and 6 to 13, inclusive		$ 363,302 34
	DEDUCTIONS		
15.	Compensation of officers. (From Schedule F)	$ 139,905	24
16.	Salaries and wages (not deducted elsewhere)	673,874	43
17.	Rent	51,621	52
18.	Repairs	[illegible]	
		[illegible]	
		14,417	05
21.	Taxes. (From Schedule H) (Deduct declared value excess-profits and credits taxes as items 33 and 35)	204,044	11
22.	Contributions or gifts paid. (From Schedule I)	-	
23.	Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)	-	
24.	Depreciation. (From Schedule J)	288,135	38
25.	Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)		
26.	Net operating loss deduction. (Submit statement)	576,410	68
27.	Amortization. (Submit schedule)	449,805	71

10. Royalties			
11. (a) Net short-term capital gain. (From Schedule C)			
(b) Net long-term capital gain (or loss). (From Schedule C)	2,056,548	16	
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)	25,750	50	
12. Dividends. (From Schedule E)	245	75	
13. Other income. (State nature)	61,718	11	
14. Total income in items 3, and 6 to 13, inclusive			$ 363,302 34
DEDUCTIONS			
15. Compensation of officers. (From Schedule F)	$ 139,905	24	
16. Salaries and wages (not deducted elsewhere)	673,874	43	
17. Rent	51,621	52	
18. Repairs	[illegible]		
[illegible]	[illegible]		
[illegible]	14,417	05	
21. Taxes. (From Schedule H) (Deduct declared value excess-profits and [illegible] taxes as items 33 and 35)	204,044	11	
22. Contributions or gifts paid. (From Schedule I)	-		
23. Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)	-		
24. Depreciation. (From Schedule J)	288,135	38	
25. Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)	-		
26. Net operating loss deduction. (Submit statement)	576,410	68	
27. Amortization. (Submit schedule)	-		
28. Other deductions authorized by law. (From Schedule K)	448,805	71	
29. Total deductions in items 15 to 28, inclusive			2,323,276 63
30. Net income for declared value excess-profits tax computation (item 14 minus item 29)			4,559,974 29
31. Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (6))			-
32. Total of lines 30 and 31			4,559,974 29
33. Less: Declared value excess-profits tax			-
34. Net income for capital stock tax purposes			4,559,974 29
35. Less: Excess profits tax			-
36. Net income			4,559,974 29
37. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 8 (a) and 31)			-
38. Adjusted net income			4,559,974 29
39. Less: Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38, above)			-
40. Remainder net income			4,559,974 29
TOTAL INCOME AND DECLARED VALUE EXCESS-PROFITS TAXES			
41. Total income tax (line 33, page 2)	$ None		
42. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation	None		
43. Balance of income tax			$ None
44. Total declared value excess-profits tax (line 8, page 2)			None
45. Total income and declared value excess-profits taxes due			$ None

AFFIDAVIT. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 15th day of May, 194[illegible]

NOTARIAL SEAL — Notary Public, Ingham Co., Mich. — My Comm. ion Expires June 22, 1942

CORPORATE SEAL

(Signature of officer administering oath) (Title)

(President or other principal officer) (State title)

(Treasurer, Assistant Treasurer, or Chief Accounting Officer) (State title)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this _____ day of _____, 194[illegible]

Affidavit attached

NOTARIAL SEAL

(Signature of officer administering oath) (Title)

(Signature of person preparing this return)

(Signature of person preparing this return)

(Name of firm or employer, if any)

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Respondent's Exhibit A.

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DECLARED VALUE EXCESS-PROFITS TAX COMPUTATION. (See Computation Instructions)

Line No.		Column 1	Col. 2 Rate	Column 3 Amount of Tax
1.	Net income for declared value excess-profits tax computation (item 30, page 1)	$ Loss		
2.	Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1941 (or for year ended June 30, 1942, if your income tax fiscal year began in 1941 and ended on or after July 31, 1942) $10,000,000.00			
3.	10 percent of line 2 $1,000,000.00			
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38, page 1) -	1,000,000 00		
5.	Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4)	$ None		
6.	Amount taxable at 6.6 percent (5 percent of line 2, but not more than line 5); and tax		6.6%	$
7.	Balance taxable at 13.2 percent (line 5 minus line 6, column 1); and tax	$	13.2%	
8.	Total declared value excess-profits tax (total of line 6, column 3, and line 7, column 3)			$

INCOME TAX COMPUTATION. (See Computation Instructions)

NORMAL TAX COMPUTATION

Domestic corporations with normal-tax net incomes of less than $25,000.01

9.	Normal-tax net income (item 40, page 1)	$ Loss		
10.	Portion of line 9 (not in excess of $5,000); and tax at 15 percent	$	15%	$
11.	Portion of line 9 (in excess of $5,000 and not in excess of $20,000); and tax at 17 percent		17%	
12.	Portion of line 9 (in excess of $20,000 and not in excess of $25,000); and tax at 19 percent		19%	
13.	Portion of line 9 (in excess of $25,000); and tax at 37 percent		37%	
14.	Total normal tax (total tax in column 3 of lines 10, 11, 12, and 13)			$ None

Domestic corporations with normal-tax net incomes of $25,000.01 or more and foreign corporations engaged in business within the United States irrespective of amount of normal-tax net income

15.	Normal-tax net income (item 40, page 1)	$		
16.	Normal tax (24 percent of line 15)		24%	$

SURTAX COMPUTATION

17.	Net income (item 36, page 1)	$		
18.	Less: Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of line 17)			
19.	Surtax net income	$		
20.	Portion of line 19 (not in excess of $25,000); and tax at 6 percent	$	6%	$
21.	Portion of line 19 (in excess of $25,000); and tax at 7 percent		7%	
22.	Total surtax (total tax in column 3 of lines 20 and 21)			$ None

NORMAL TAX AND SURTAX COMPUTATION FOR MUTUAL INVESTMENT COMPANIES

23.	Adjusted net income (computed without net operating loss deduction) (item 38, page 1, plus item 26, page 1)	$		
24.	Less: Basic surtax credit. (Submit schedule)			
25.	Supplement Q net income	$		
26.	Normal tax (24 percent of line 25)		24%	$
27.	Net income (computed without net operating loss deduction) (item 36, page 1, plus item 26, page 1)	$		
28.	Less: Dividends paid (including consent dividends credit)			
29.	Supplement Q surtax net income	$		
30.	Portion of line 29 (not in excess of $25,000); and tax at 6 percent	$	6%	$
31.	Portion of line 29 (in excess of $25,000); and tax at 7 percent		7%	
32.	Total surtax (total tax in column 3 of lines 30 and 31)			$
33.	Total normal tax and surtax (line 14, 16, or 26 plus line 22 or 32, whichever is applicable)			$ None

Schedule A.—COST OF GOODS SOLD. (See Instruction 3)

(Where inventories are an income-determining factor)

Inventory at beginning of year	$1,362,565 69
Material or merchandise bought for manufacture or sale	5,526,687 65
Salaries and wages	1,427,777 89
Other costs per books. (Attach itemized schedule)	465,677 20

Schedule B.—COST OF OPERATIONS

(Where inventories are not an income-determining factor)

Salaries and wages	$
Other costs (to be detailed):	
(a)	
(b)	
(c)	None

21. Portion of line 19 (in excess of $25,000), and tax at 7 percent		
22. Total surtax (total tax in column 3 of lines 20 and 21)		$ None

NORMAL TAX AND SURTAX COMPUTATION FOR MUTUAL INVESTMENT COMPANIES

23. Adjusted net income (computed without net operating loss deduction) (item 28, page 1, plus item 26, page 1)	$		
24. Less: Basic surtax credit. (Submit schedule)	$		
25. Supplement Q net income			
26. Normal tax (24 percent of line 25)		24%	$
27. Net income (computed without net operating loss deduction) (item 36, page 1, plus item 26, page 1)	$		
28. Less: Dividends paid (including consent dividends credit)	$		
29. Supplement Q surtax net income	$		
30. Portion of line 29 (not in excess of $25,000); and tax at 6 percent	$	6%	$
31. Portion of line 29 (in excess of $25,000); and tax at 7 percent		7%	
32. Total surtax (total tax in column 3 of lines 30 and 31)			$
33. Total normal tax and surtax (line 14, 16, or 26 plus line 22 or 32, whichever is applicable)			$ None

Schedule A.—COST OF GOODS SOLD. (See Instruction 2)
(Where inventories are an income-determining factor)

Inventory at beginning of year	$1,362,564 69
Material or merchandise bought for manufacture or sale	5,526,687 65
Salaries and wages	1,427,777 89
Other costs per books. (Attach itemized schedule)	465,677 20
Total	$8,782,707 43
Less: Inventory at end of year	2,692,214 21
Cost of goods sold (enter as item 2 page 1)	$6,090,493 22

Schedule B.—COST OF OPERATIONS
(Where inventories are not an income-determining factor)

Salaries and wages	$
Other costs (to be detailed):	
(a)	
(b)	
(c)	None
(d)	
(e)	
Total (enter as item 5, page 1)	$

Schedule C.—CAPITAL GAINS AND LOSSES. (See Instruction 11)

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Contract price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvements Subsequent to Acquisition or March 1, 1913	6. Depreciation Allowed (or allowable) Since Acquisition or March 1, 1913 (Furnish details)	7. Gain or Loss (column 3 plus column 6 minus the sum of columns 4 and 5)
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR NOT MORE THAN 18 MONTHS						
		$	$	$	$	$
Total net short-term capital gain (or loss) for the taxable year (no net loss allowable)						$
Net short-term capital loss of preceding taxable year (not in excess of the net income for such year). (Deduct from total net short-term capital gain in column 7)						None
Total net short-term capital gain (or loss). (Enter as item 11 (a), page 1, amount of gain. No net loss allowable)						$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS						
Reo Sales Corporation common stock	6-6-23	$ -	$ 1,552,248 16	$ -	$ -	$ 1,552,248 16
Reo Motors, Inc., common stock (treasury stock)	Various	41,250 00	545,550 00	-	-	504,300 00
Total net long-term capital gain (or loss). (Enter as item 11(b), page 1)						$ 2,056,548 16

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 11)

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Contract price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvements Subsequent to Acquisition or March 1, 1913	6. Depreciation Allowed (or allowable) Since Acquisition or March 1, 1913 (Furnish details)	7. Gain or Loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Schedule D attached						
Total net gain (or loss). (Enter as item 11 (c), page 1)						$

Supplemental information required for Schedules C and D

State with respect to each item of property reported in Schedules C and D: (1) how property was acquired by purchase (2) whether at time of sale or exchange (a) purchaser owned directly or indirectly more than 50 percent in value of your outstanding stock, (b) where purchaser was a corporation, more than 50 percent in value of its capital stock and 50 percent in value of your capital stock was owned directly or indirectly by or for the same individual or his family, and (c) where purchaser was a corporation, whether more than 50 percent in value of its capital stock was owned directly or indirectly by you No If so, state name and address of purchaser -

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Respondent's Exhibit A

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Schedule E.—INCOME FROM DIVIDENDS

1. Name and Address of Paying Corporation	2. *Domestic Corporations Taxable under Chapter 1, Internal Revenue Code	3. Foreign Corporations	4. Other Corporations
Watson-Woodward Corporation, Detroit, Michigan	$ 200 75	$	$
Washington-Jefferson Realty Co., do.	45 00		
Totals	$ 245 75	$ -	$ -
Total of columns 2, 3, and 4. (Enter as Item 13, page 1)			$ 245 75

*Except dividends received from corporations organized under the China Trade Act, 1922, and corporations entitled to the benefits of section 251 of the Internal Revenue Code, which dividends should be reported in column 4.

Dividends on share accounts in Federal savings and loan associations should not be listed, but the amount should be included in Items 11 and 19, page 1.

Schedule F.—COMPENSATION OF OFFICERS

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Business	4. Percentage of Corporation's Stock Owned: Common	4. Percentage of Corporation's Stock Owned: Preferred	5. Amount of Compensation
H. E. Hund, Lansing, Mich.	President	Entire	3%	-	$28,988 87
W. C. Wood (Resigned 4/30/41) do.	Secty.-Treas.		-	-	1,680 00
E. F. McKim, do.	Secretary	do.	-	-	5,400 00
G. Whisler do.	Treasurer	do.	-	-	3,636 37
Total compensation of officers. (Enter as Item 11, page 1)					$39,905 24

Note.—Schedule F-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of $75,000 was paid to any officer or employee.

Schedule G.—BAD DEBTS. (See Instruction 19) (See note 1)

1. Taxable Year	2. Net Income Reported	3. Debts on Account	4. Bad Debts Charged Off by Corporation if No Reserve is Created on Books (See note 2)	If Corporation Carries a Reserve—5. Gross Amount Added to Reserve	If Corporation Carries a Reserve—6. Amount Charged Against Reserve
1937	$	$	$	$	$
1938. (See note 2)	Schedule G1 and G2 attached				
1939. (See note 2)					
1940. (See note 2)					
1941. (See note 2)					

1. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐.
2. Not including securities which are capital assets ascertained to be worthless and charged off within the taxable year. Such securities charged off within the year covered by this return should be reported in Schedule C.

Schedule H.—TAXES. (See Instruction 21)

Nature	Amount
Real and personal property	$ 63,308 79
Social security	120,542 44
Federal capital stock	13,500 00
Franchise fees	6,502 42
Michigan intangible tax	190 46
Total. (Enter as Item 21, page 1)	$ 204,044 11

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 23)

Name and Address of Organization	Amount
	$
Total. (Enter as Item 22, page 1, subject to 5 percent limitation). (See Instruction 23)	$ None

Schedule J.—DEPRECIATION. (See Instruction 24)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis (Do not include land or other nondepreciable property)	4. Assets Fully Depreciated in Use at End of Year	5. Depreciation Allowed (or allowable) in Prior Years	6. Remaining Cost or Other Basis To Be Recovered	7. Estimated Life Used in Computing Depreciation	8. Estimated Remaining Life From Beginning of Year	9. Depreciation Allowable This Year
		$	$	$	$			$

Nature	Amount	Name and Address of Organization	Amount
Real and personal property	$ 63,308 79		$
Social security	120,542 44		
Federal capital stock	13,500 00		
Franchise fees	6,502 42		
Michigan intangible tax	190 46		
Total. (Enter as Item 21, page 1)	$ 204,044 11	Total. (Enter as Item 22, page 1, subject to 5 percent limitation). (See Instruction 22)	$ None

Schedule J.—DEPRECIATION. (See Instruction 24)

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis (Do not include land or other nondepreciable property)	4. Amts Prev. Depreciated to Beg. of Year	5. Depreciation Allowed (or allowable) in Prior Years	6. Remaining Cost or Other Basis To Be Recovered	7. Rate Used in Computing Depreciation	8. Depreciation Allowable From Beginning of Year	9. Depreciation Allowable This Year
		$	$	$	$			$
		Schedule J attached						
Total. (Enter as Item 24, page 1)								$

Schedule K.—OTHER DEDUCTIONS. (See Instruction 25)

Schedule K attached

QUESTIONS

1. Date of incorporation January 2, 1940
2. State or country Michigan
3. State collector's office where the corporation's return for the preceding year was filed Detroit, Michigan
4. The corporation's books are in care of Company

   Located at Lansing, Michigan
5. Number of places of business 15
6. Was the corporation during the taxable year engaged in the production of facilities for national defense through Government contracts or subcontracts? Yes
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No (If so, an additional return on Form 1120 H must be filed.)
8. Is this a consolidated return of railroad corporations or Pan-American trade corporations? No (If so, procure from the collector of internal revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.)
9. If this is not a consolidated return of railroad corporations or Pan-American trade corporations, (a) did you own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? Yes; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of your voting stock? No (If either answer is "yes," attach separate schedule showing: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
10. Is this return made on the basis of cash receipts and disbursements? No If not, describe fully what other basis or method was used in computing net income accrual basis
11. If answer to Question 10 is "yes," do you elect under section 42 to include as income received in the current year the increase for the current and prior years in redemption price of noninterest-bearing obligations issued at a discount? — If so, attach statement listing obligations owned and computation of accrued income. Report such income as interest in Item 7 or 8, whichever is applicable.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower lower of cost or market If other basis is used, describe fully, state why used, and the date inventory was last reconciled with stock
13. Did the corporation make a return of information on Forms 1096 and 1099 for the calendar year 1941 (see Instruction C-(1))? Yes
14. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no") Yes (If answer is "yes," attach statement as required by Instruction E-(2).)

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Respondent's Exhibit A

Schedule L.—BALANCE SHEETS. (See Instruction L)

ASSETS	Beginning of Taxable Year Amount	Beginning of Taxable Year Total	End of Taxable Year Amount	End of Taxable Year Total
1. Cash		$ 43,536 59		$305,482 48
2. Notes and accounts receivable	$642,922 24		1,587,119 08	
Less: Reserve for bad debts	30,000 00	612,922 24	95,000 00	1,492,119 08
3. Inventories (Items) Raw materials, finished & partly finished prod.	$268,050 33		2,501,532 76	
Supplies	94,514 36	1,362,564 69	190,681 45	2692,214 21
4. Investments (Government obligations):				
(a) State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$ -		$ -	
(b) United States (issued prior to March 1, 1941)	-		-	
(c) Instrumentalities of the United States (issued prior to March 1, 1941)	-		-	
(d) United States or agency or instrumentality thereof (issued on or after March 1, 1941)	-	-	-	-
5. Other investments (Items) Invest. in supsidiaries	177,516 88		152,516 88	
Land contracts & misc.	53,048 93	230,565 81	48,941 55	201,458 43
6. Capital assets:				
(a) Depreciable assets (Items) Build. & equip.	$1,470,411 17		1,624,744 34	
Machinery and equipment	2,343,788 87		2,167,850 01	
Total depreciable assets	$3,814,200 04		3,792,595 35	
Less: Reserve for depreciation	3,293,496 05	1,520,703 99	2,906,272 02	886,322 33
(b) Depletable assets	$ -		$ -	
Less: Reserve for depletion	-	-	-	-
(c) Land	181,454 49	461,597 64	350,702 83	382,556 45
7. Other assets (Items) Adv. to subs. less reserve			$ 125,906 31	
R.F.C. suspense account	230,138 45		15,957 82	
Deferred charges	99,061 63	686,818 02	150,630 61	640,967 37
8. TOTAL ASSETS		$5,918,703 01		$6,601,120 35
LIABILITIES				
9. Accounts payable		$263,103 99		$591,742 82
10. Bonds, notes, and mortgages payable:				
(a) With original maturity of less than 1 year	$147,753 84		$ -	
(b) With original maturity of 1 year or more	945,291 51	1,093,045 35	97,392 54	97,392 54
11. Accrued expenses (Items) Taxes	$ 91,957 02		$ 93,192 53	
Other	70,733 96	162,690 99	156,974 34	250,166 87
12. Other liabilities (Items) Deferred income	$233,878 36		$ 57,597 07	
	-	233,878 36	-	57,597 07
13. Surplus reserves (Items) Contingencies & misc.	$137,019 42		$ 280,236 36	
For possible loss on liquidation of assets	726,469 12		124,000 00	
For depreciation in inventories	94,860 74	958,349 28	130,882 74	535,119 26
14. Capital stock:				
(a) Preferred stock	$ -		$ -	
(b) Common stock, less held in treasury	1,800,000 00	1,800,000 00	465,000 00	465,000 00
15. Paid-in or capital surplus		2,700,000 00		4,277,540 28
16. Earned surplus and undivided profits		1,292,364 96		326,561 51
17. TOTAL LIABILITIES		$5,918,703 01		$6,601,120 35

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:		12. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	$
(a) Cash	$	13. Adjusted net income (Item 38, page 1)	
(b) Stock of the corporation		14. Nontaxable and partially exempt income:	
(c) Other property		(a) Interest on:	
2. Contributions (excess over 5 percent limitation)	See	(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income taxes	Schedule	(2) Obligations of the United States issued on or before Sept. 1, 1917; Treasury notes, Treasury bills, and Treasury certificates of indebtedness issued prior to March 1, 1941	
4. Income taxes claimed as a credit in whole or in part in item 42, page 1	M	(3) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended	
5. Federal taxes paid on tax-free covenant bonds			
6. Excess of short-term capital losses over short-term capital gains	attached		

13. Surplus reserves (itemize) Contingencies & misc.	$	720,863	75			$	690,863	75		
For possible loss on liquidation of assets		64,886	74	958,349	28		124,886	74	535,119	26
14. Capital stock:										
(a) Preferred stock	$	-				$	-			
(b) Common stock, less held in treasury		1,800,000	00	1,800,000	00		465,000	00	465,000	00
15. Paid-in or capital surplus				2,700,000	00				4,277,540	28
16. Earned surplus and undivided profits				1,292,364	96				326,561	51
17. TOTAL LIABILITIES				$ 6,918,703	01				6,601,120	33

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:		13. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	$
(a) Cash	$	14. Adjusted net income (item 38, page 1)	
(b) Stock of the corporation		15. Nontaxable and partially exempt income:	
(c) Other property	See	(a) Interest on:	
2. Contributions (excess over 5 percent limitation)		(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income taxes	Schedule	(2) Obligations of the United States issued on or before Sept. 1, 1917; Treasury notes, Treasury bills, and Treasury certificates of indebtedness issued prior to March 1, 1941	
4. Income taxes claimed as a credit in whole or in part in item 42, page 1	M	(3) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended	
5. Federal taxes paid on tax-free covenant bonds		(4) United States savings bonds and Treasury bonds owned in the principal amount of $5,000 or less issued prior to March 1, 1941	
6. Excess of short-term capital losses over short-term capital gains	attached	(5) United States savings bonds and Treasury bonds owned in the principal amount of over $5,000 issued prior to March 1, 1941	
7. Additions to surplus reserves (list separately):		(6) Obligations of instrumentalities of the United States (other than obligations to be reported in (3) above) issued prior to March 1, 1941	
(a)		(b) Other nontaxable income (itemize):	
(b)		(1)	
8. Other unallowable deductions:		(2)	
(a)		16. Charges against surplus reserves (itemize):	
(b)		17. Adjustments not recorded on books (itemize):	
9. Adjustments not recorded on books (itemize):		18. Sundry credits to earned surplus (itemize):	
(a)			
(b)			
10. Sundry debits to earned surplus (itemize):			
(a)			
(b)			
11. Earned surplus and undivided profits at close of the taxable year (Schedule L)			
12. Total of lines 1 to 11	$	19. Total of lines 13 to 18	$

EXCESS PROFITS TAX. (See Instructions for Form 1121)

(a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes

(b) A corporation joining in the making of a consolidated excess profits tax return should indicate below the name and address of the corporation which is filing the consolidated excess profits tax return for the entire affiliated group, and the collector's office in which the consolidated return is being filed

(c) If a personal service corporation signifies below its desire not to be subject to the excess profits tax, it shall be exempt from such tax and the provisions of Supplement S, Chapter 1, shall apply to the shareholders in such corporation who were such shareholders on the last day of the taxable year of the corporation. (Attach Form 1121PS.)

(d) If corporation claims exemption under section 727 of the Internal Revenue Code, state basis of claim

(e) If an excess profits tax return is not being filed for the reason that it is claimed that the excess profits net income computed under the invested capital method is not greater than $5,000, the following Schedule N should be filled in. The completion of Schedule N does not constitute the filing of an excess profits tax return.

Schedule N.—EXCESS PROFITS NET INCOME COMPUTATION

1. Normal-tax net income (computed without deduction of excess profits tax)	$	5. Dividends received credit adjustment (item 12, page 1, excluding dividends received from foreign personal holding companies, minus item 39, page 1)*	$
2. 50 percent of interest on borrowed capital		6. Additional charitable, etc., deductions	
3. Net long-term capital loss (item 11 (b), page 1)		7. Net long-term capital gain (item 11 (b), page 1)	
4. Total of lines 1 to 3	$	8. Net gain from sale or exchange of depreciable property held more than 18 months	
		9. Income from retirement of bonds, etc	
		10. Refunds and interest on Agricultural Adjustment Act taxes	
		11. Recoveries of bad debts	
		12. Total of lines 5 to 11	$

13. Excess profits net income (for purpose of determining necessity for filing return) (line 4 minus line 12) $

*The adjustment for dividends received on stock held primarily for sale to customers by a dealer in securities.

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Respondent's Exhibit A

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Respondent's Exhibit A

REO MOTORS, INC.

LANSING, MICHIGAN

LIST OF SCHEDULES ATTACHED TO RETURN

ON FORM 1120 FOR THE YEAR 1941

Copies of letters granting extensions of time for filing return
Affidavit regarding preparation of return
Information regarding ownership of stocks of other corporations as required by Questions 9(a) and 14

Schedule	A	- Cost of goods sold - other costs
do.	D	- Gains and losses from sales or exchanges of property other than capital assets
Item	13	- Other income
Schedule	F-1	- Compensation of officers and employees in excess of $75,000
Schedule	G-1	- Bad debts
do.	G-2	- Loss on settlement of intercompany current account with Reo Sales Corporation (wholly-owned domestic subsidiary company)
do.	J	- Depreciation
Item	26	- Net operating loss carry-over
Schedule	K	- Other deductions authorized by law
do.	M	- Reconciliation of net income and analysis of earned surplus and undivided profits
do.	M-1	- Analysis of changes in non-deductible reserves and capital surplus

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Respondent's Exhibit A

COPY

TREASURY DEPARTMENT

Internal Revenue Service

Detroit, Michigan

In replying refer to: April 10, 1942.

IT:JC:MSC

FORM 1120

Reo Motors, Incorporated,
305 Baker Street,
Lansing, Michigan.

Gentlemen:

In compliance with your request of recent date, a further extension of time from April 15, 1942, to May 15, 1942, for filing your return of income for the calendar year 1941, is hereby granted.

In all cases where an extension of time is granted the Law provides that interest shall be collected at the rate of one-half of one per cent a month upon each installment, from the original due date thereof to the date of payment.

A copy of this letter must be attached to the return when it is filed as authority for the extension of time herein granted.

Respectfully,

GUY T. HELVERING, Commissioner.

By: (Signed) GILES KAVANAGH

Collector.

Respondent's Exhibit A

COPY

TREASURY DEPARTMENT

Internal Revenue Service

Detroit, Michigan.

In replying refer to:

IT:JC:MSC March 14, 1942

Form 1120

Bee Motors, Incorporated,
Baker Street,
Lansing, Michigan.

Gentlemen:

IMPORTANT: PLEASE READ CAREFULLY

TENTATIVE RETURN MUST BE FILED

Receipt is acknowledged of your letter of recent date requesting for the reason given therein, extension of time within which to file your return of income for the calendar year 1941.

You are hereby granted an extension of time to April 15, 1942 within which to complete your return for the taxable year above mentioned PROVIDED a tentative return is filed with the Collector of Internal Revenue for your district on or before Tentative Filed 3/14/42 and payments made at that time of at least one-fourth of the total estimated tax shown thereon to be due.

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules shown on the form need not be filled in.

A copy of this letter MUST BE ATTACHED to the tentative and completed returns as authority for the extension of time herein granted.

Respectfully,

GUY T. HELVERING, Commissioner

[illegible] FAVREAU, Collector

Respondent's Exhibit A

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

Pursuant to instructions received from Mr. H. E. Hund, President of Reo Motors, Inc., Lansing, Michigan, I, E. F. Wolleben, acting on behalf of Price, Waterhouse & Co., 1946 Penobscot Building, Detroit, Michigan, as adviser for the said Reo Motors, Inc., affirm that I prepared the attached return for the year ending December 31, 1941, which shows a loss (line 38) of $2,559,974.28 and no tax payable on the basis of information furnished by the said Reo Motors, Inc., in connection with an examination of the financial statements of the company; that the information set out in the return and accompanying schedules correctly and fairly reflects the information furnished to or discovered by me during the course of the preparation of the return and that said information is true to the best of my information and belief.

E. F. Wolleben

Subscribed and sworn to before me

this 14th day of May, 1942.

Dorothy B. Ruhl

Notary Public, Wayne County, Michigan.

My commission expires 6/29/45.

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Respondent's Exhibit A

REO MOTORS, INC.

LANSING, MICHIGAN

INFORMATION REGARDING OWNERSHIP OF STOCKS OF OTHER CORPORATIONS

AS REQUIRED BY QUESTIONS 9(a) AND 14 - YEAR 1941

Name and address	Percentage of stock owned	Date stock acquired (Note (1))	Collector's office in which income tax returns of such corporations were filed
Domestic corporations:			
Reo Sales Corporation, Lansing, Michigan (Note (2))	100	January 2, 1940	Detroit, Mich.
Sagamore Hill Land Company, Lansing, Michigan	66-2/3	do.	do.
Foreign corporations:			
Reo Motor Company of Canada, Ltd., Toronto, Ontario	100	do.	-
Reo Motors (Britain), Ltd., England	100	do.	-

Notes:

(1) The stocks of the above affiliated companies were acquired by the taxpayer corporation from Reo Motor Car Company (the predecessor company) under a plan of reorganization dated September 20, 1939, and approved by the District Court of the United States for the Eastern District of Michigan, Southern Division, October 9, 1939 and confirmed December 2, 1939.

(2) The assets, less liabilities, of Reo Sales Corporation were transferred as of February 1, 1941, to the taxpayer (the parent corporation) in settlement of the intercompany current account, and certificate of dissolution of Reo Sales Corporation was filed on December 31, 1941.

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Respondent's Exhibit A

Schedule A

REO MOTORS, INC.

LANSING, MICHIGAN

COST OF GOODS SOLD - OTHER COSTS - YEAR 1941

Supplies	$ 93,666.55
Rearrangement of plant machinery and equipment	37,915.64
Perishable tools	134,618.94
Gasoline and oil	21,785.26
Gas, water, heat and power	171,325.66
Scrap	51,033.97
Traveling	5,040.06
Engineering changes	5,327.69
Freight and cartage	5,741.19
Insurance	7,335.81
Amortization of tools	62,683.57
Telephone and telegraph	12,215.41
Outside experimental work	4,676.93
Equipment rental	7,035.89
Product guarantee	26,040.95
Miscellaneous	2,619.42
Departmental expense redistributed	81,317.80
Total	$465,677.20

Schedule D

R E O M O T O R S, I N C.

LANSING, MICHIGAN

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

OTHER THAN CAPITAL ASSETS - YEAR 1941

Description of property	Date acquired	Gross sales price	Cost	Expense of sale	Depreciation allowable	Gain or loss
Land, buildings and equipment:						
Cedar Street, Lansing, Michigan	1918 and subsequent	$ 475,000.00	$ 737,135.22	$ -	$ 303,879.86	$ 41,744.64
Mount Hope Street, Lansing, Michigan	1924 and subsequent	750,000.00	975,429.27	-	451,610.68	226,181.41
East Jefferson Avenue, Detroit, Michigan		50,000.00	365,543.17	-	93,336.74	222,206.43
Together		$1,275,000.00	$2,078,107.66	$ -	$ 848,827.28	$ 45,719.62
Machinery and equipment	Various	208,040.51	790,371.07	21,306.84	581,617.98	22,019.42
Autos and trucks	do.	12,177.50	16,530.10	-	6,402.90	2,050.30
		$1,495,218.01	$2,885,008.83	$21,306.84	$1,436,848.16	$ 25,750.50 (Item 11(e), page 1 of return)

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Respondent's Exhibit A

Item 13

R E O M O T O R S, I N C.

LANSING, MICHIGAN

OTHER INCOME - YEAR 1941

Proceeds from sale of scrap, etc.	$35,004.55
Discounts earned on purchases	18,755.12
Recoveries on accounts previously written off	5,926.27
Miscellaneous	2,032.17
Total (Item 13, Page 1 of return)	$61,718.11

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Respondent's Exhibit A

Schedule G-1

REO MOTORS, INC.

LANSING, MICHIGAN

BAD DEBTS - YEAR 1941

Taxable Year (1)	Sales on account	Gross amount added to reserve	Amounts charged against reserve
1940	$2,574,417.40	$17,067.88	$ 693.65
1941	8,310,943.40	31,222.47 (2) 31,008.01 (3) 5,926.27 (4)	3,156.75

Notes:

(1) Taxpayer incorporated January 2, 1940
(2) Provision for doubtful accounts, harged to profit and loss
(3) Reserve for doubtful accounts transferred from Reo Sales Corporation (See Schedule G-2)
(4) Recoveries on amounts previously charged off (See Item 13, Page 1 of return)

SUMMARY

Addition to reserve as provisions for bad debts, including recoveries on amounts previously written off (as above)	$ 37,148.74
Loss on settlement of intercompany current account with Reo Sales Corporation, wholly-owned domestic subsidiary company dissolved in 1941	215,487.62
Together (Item 19, Page 1 of return)	$252,636.36

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Respondent's Exhibit A Schedule G-2

REO MOTORS, INC.

LANSING, MICHIGAN

LOSS ON SETTLEMENT OF INTERCOMPANY CURRENT ACCOUNT WITH REO SALES CORPORATION (WHOLLY-OWNED DOMESTIC SUBSIDIARY COMPANY, DISSOLVED IN 1941)

Book value of net assets of Reo Sales Corporation transferred to taxpayer corporation as of February 1, 1941, in settlement of current account:			
Cash			$ 64,305.79
Accounts receivable, less reserve of $31,008.01			196,178.43
Inventories			642,663.25
Miscellaneous securities and deposits			139.50
Claim against closed bank		$ 2,291.98	
Less: Reserve		2,291.98	-
Properties-			
Land		$ 72,811.88	
Buildings and equipment	$252,982.53		
Less- Reserve for depreciation	137,898.23	115,084.30	
Land not used in operations		1,600.00	189,496.18
Deferred charges			14,447.62
			$1,107,221.77
Deduct- Liabilities:			
Accounts payable		$ 28,044.82	
Customers' deposits		3,237.11	
Accrued payroll and commissions		2,143.36	
Accrued insurance and taxes		18,787.16	
Unearned interest		6,789.37	59,001.82
Book value of net assets transferred			$1,048,219.95
Amount owing by Reo Sales Corporation to taxpayer corporation on current account			1,263,707.57
Loss (Bad debt) charged against reserve for possible loss on current account (Schedule G-1)			$ 215,487.62

Res

R E O M O T O R S, I N C.

LANSING, MICHIGAN

DEPRECIATION - YEAR 1941

Kind of property	Remaining unrecovered cost at December 31, 1940	Additions at cost	Transfers from Reo Sales Corporation (net of reserve)	Unrecovered cost of items sold or otherwise disposed of	Depreci allowab year
Buildings:					
Factory, truck plant and clubhouse	$1,800,229.57	$ -	$ -	$ 841,182.85	$ 67,16
Branches	181,460.65	-	91,258.55	181,460.65	5,98
	$1,981,690.22	$ -	$91,258.55	$1,022,643.50	$ 73,14
Building equipment	16,407.82	-	-	10,564.49	5,35
Machinery	808,869.50	27,748.78	-	208,753.09	95,59
Factory equipment	629,843.21	-	-	-	77,90
Experimental and drafting	18,698.95	-	-	-	2,34
Power and heating	24,983.55	-	-	-	3,57
Electrical equipment	75,361.81	-	-	-	11,17
Clubhouse equipment	7,853.26	-	-	-	1,04
Unclassified plant	18,340.94	-	-	-	3,55
Autos and trucks	15,077.13	5,163.80	-	12,371.33	2,44
Furniture and fixtures	11,685.85	4,796.93	-	-	2,82
Branch equipment:					
Machinery	-	601.39	6,1.81	186.36	13
Operating equipment	-	3,249.26	16,306.26	3,918.27	2,54
Furniture and fixtures	-	708.68	4,359.29	279.62	74
Service cars	-	16,009.70	2,525.39	6,963.64	5,74
					$288,13 (Item 24 1 of re

Respondent's Exhibit A Schedule I

R E O M O T O R S, I N C.

LANSING, MICHIGAN

DEPRECIATION - YEAR 1941

Remaining unrecovered cost at December 31, 1940	Additions at cost	Transfers from Reo Sales Corporation (net of reserve)	Unrecovered cost of items sold or otherwise disposed of	Depreciation allowable for year 1941	Remaining unrecovered cost at December 31, 1941	Estimated life in years used in accumulating depreciation
$1,800,229.57	$ -	$ -	$ 841,182.85	$ 67,160.39	$891,886.33	40
181,460.65	-	91,258.55	181,460.65	5,984.27	85,274.28	50
$1,981,690.22	$ -	$91,258.55	$1,022,643.50	$ 73,144.66	$977,160.61	
16,407.82	-	-	10,564.49	5,358.33	485.00	13-1/3
808,869.50	27,748.78	-	208,753.09	95,596.58	532,268.61	20
629,843.21	-	-	-	77,906.19	551,937.02	20
18,698.95	-	-	-	2,347.98	16,350.97	20
24,983.55	-	-	-	3,570.33	21,413.22	20
75,361.81	-	-	-	11,173.17	64,188.64	20
7,853.26	-	-	-	1,046.22	6,807.04	20
18,340.94	-	-	-	3,558.11	14,782.83	20
15,077.13	5,163.80	-	12,371.33	2,442.35	5,427.25	5
11,685.85	4,796.93	-	-	2,822.33	13,660.45	10
-	601.39	634.81	186.36	134.73	915.11	10
-	3,249.26	16,306.26	3,918.27	2,546.34	13,090.91	10
-	708.68	4,359.29	279.62	743.61	4,044.74	10
-	16,009.70	2,525.39	6,963.64	5,747.45	5,824.00	4
				$288,138.38 (Item 24, page 1 of return)		

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Respondent's Exhibit A Item 26

R E O MOTORS, INC.

LANSING, MICHIGAN

NET OPERATING LOSS CARRY-OVER - YEAR 1941

Statutory loss as shown by 1940 return			$181,737.22
Add:			
Adjustment of gain on sales of property other than capital assets, reported in return-			
Reduction in gain reported on sale of North Grand Avenue property due to error in cost of building-			
Cost as reported in return	$ 98,280.01		
Should have been	129,359.25	$ 31,079.24	
Reduction in amount of accrued depreciation on machinery and equipment sold in 1940		540,260.49	571,339.73
Additional capital stock tax for year ending June 30, 1941 ($10,000,000 declared value @ $1.10 per M)	$11,000.00		
Less- Amount claimed as deduction in 1940	2,800.00		8,200.00
			$761,276.95
Deduct:			
Adjustment of sales and cost of sales to subsidiary company during 1940 excluded in error from income		$81,477.08	
Reduction in amount of depreciation claimed for year 1940-			
Claimed in return	$469,323.08		
Should have been	374,839.46	94,483.62	
Excessive amount claimed for property taxes in 1940 due to computing local taxes as accrued rather than as paid in advance-			
Adjustment as at December 31, 1940 (Schedule M)	$56,453.53		
Less- Similar adjustment as at December 31, 1939	47,547.96	8,905.57	184,866.27
Statutory loss for year 1940 as adjusted			$576,410.68 (Item 26, page 1 of return)

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Respondent's Exhibit A

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REO MOTORS, INC.

LANSING, MICHIGAN

OTHER DEDUCTIONS AUTHORIZED BY LAW - YEAR 1041

Stationery and supplies	$ 51,128.97
Gasoline and oil	16,723.39
Traveling and entertainment	68,287.06
Telephone and telegraph	33,964.48
Postage	12,286.77
Memberships and dues	3,666.41
Policy adjustments	22,445.65
Freight and cartage	28,152.61
Commissions	12,768.38
Handling allowance	2,971.02
Insurance	33,167.07
Product guarantee expense, charged to sales department	4,421.06
Legal and accounting fees	14,435.56
Directors' fees and expenses	5,888.65
Capital stock expense	7,940.92
Advertising	37,205.06
Cash discounts allowed	8,284.42
Heat, light, water and gas	48,710.79
Moving and rearranging administrative offices	16,353.10
Miscellaneous	20,212.54
Total (Item 28, page 1 of return)	$448,805.71

Respondent's Exhibit A

Schedule M

REO MOTORS, INC.

LANSING, MICHIGAN

RECONCILIATION OF NET INCOME AND ANALYSIS OF SURPLUS AND UNDIVIDED PROFITS

Adjusted net loss (Line 38, Page 1 of return)		$2,559,974.29
Profit on sales of properties other than capital assets on basis of cost (Schedule D)		25,750.50
Depreciation per books		75,750.12
Additions to reserves (Schedule M-1):		
Provision for contingencies		236,000.00
Provision for loss on investment of subsidiary company		26,244.01
Provision for obsolescence in inventories		30,000.00
Provision for scrap loss		1,294.22
Excess of capital stock tax paid for year ended June 30, 1941, over amount provided therefor in 1940		8,201.10
Reduction in carrying value of 50,000 shares of capital stock of the taxpayer held in treasury from $200,000 to $50,000, not deductible		150,000.00
		$3,113,214.24
Deduct:		
Profit on sales of properties other than capital assets on basis of carrying values	$ 655,792.30	
Loss on dissolution of subsidiary company-		
Loss on investment (excess of cost over amount at which carried in accounts) (Schedule C) $1,552,248.16		
Bad debt (Schedule C-1) 215,487.62	1,767,735.78	
Excess of cost over carrying value of treasury stock sold in 1941	530,550.00	
Depreciation based on cost (Schedule J)	288,138.38	
Net operating loss carry-over from 1940 (Item 26)	576,410.68	
Decrease in reserve for unearned profit in inventories of subsidiary companies (Schedule M-1)	171,[illegible]	
Development expense deferred on books	72,355.31	
Portion of rent paid during 1941 charged to reserve (Schedule M-1)	16,520.84	
Adjustment of accrued property taxes for year 1940 (Item 26)	56,453.5[illegible]	
Transfer of provision, no longer required, from reserve for possible loss on disposition of facilities not presently used in operations (Schedule M-1)	596,463.12	4,732,140.71
		$1,618,926.47
Less- Deficit at December 31, 1940 as shown by balance sheet at close of preceding taxable year		1,292,364.96
Earned surplus and undivided profits at close of the taxable year (Schedule L)		$ 326,561.51

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Respo

R E O M O T O R S, I N C.

LANSING, MICHIGAN

ANALYSIS OF CHANGES IN NON-DEDUCTIBLE RESERVES AND CAPITAL SURPLUS - YEAR 1941

Title of reserve	Balance at December 31, 1940	Provision charged to profit and loss	Transferred from Reo Sales Corporation	Other additions
Reserve for possible loss on investments in subsidiary companies	$ 262,896.66	$ 26,244.01	$ -	$ -
Reserve for possible loss on land contracts	6,715.90	-	-	-
Reserve for loss on claims against closed banks	276,629.91	-	2,291.98	-
Reserve for contingencies	137,019.42	236,000.00	-	-
Reserve for scrap loss	-	1,294.22	-	-
Reserve for possible loss on disposition of facilities not used in operations	726,463.12	-	-	-
Reserve for obsolescence in inventories	94,866.74	30,000.00	-	-
Reserve for unearned profit in inventories of subsidiary companies	214,361.23	171,720.77	-	-
	$1,718,952.98	$121,817.46	$2,291.98	$ -

Notes:
(1) Loss on current account with and investment in Reo Sales Corporation.
(2) Portion of rent paid in 1941 charged to reserve (see Schedule M).
(3) Reserves no longer required, transferred to capital surplus.
(4) Reserve no longer required, transferred to earned surplus (Schedule M).

CHANGES IN CAPITAL SURPLUS

Capital surplus	$2,700,000.00	$ -	$ -	$ 77,540.28(1) 1,500,000.00(2)

Notes:
(1) See Note (3) above.
(2) Transfer from capital stock account resulting from decrease in number of authorized shares of capital stock from 2,000,000 shares of $1 par value each to 500,000 shares of $1 par value each.

Respondent's Exhibit A

Schedule M-1

REO MOTORS, INC.

LANSING, MICHIGAN

ANALYSIS OF CHANGES IN NON-DEDUCTIBLE RESERVES AND CAPITAL SURPLUS - YEAR 1941

f reserve	Balance at December 31, 1940	Provision charged to profit and loss	Transferred from Reo Sales Corporation	Other additions	Deductions	Balance at December 31, 1941
investments in subsidiary	$ 262,896.66	$ 26,244.01	$ -	$ -	$240,487.62(1)	$ 48,653.05
land contracts	6,715.90	-	-	-	-	6,715.90
ainst closed banks	276,629.91	-	2,291.98	-	-	278,921.89
	137,019.42	236,000.00	-	-	16,520.84(2) 77,540.28(3)	
	-	1,294.22	-	-	-	280,252.52
disposition of facilities	726,463.12	-	-	-	596,463.12(4)	130,000.00
nventories	94,866.74	30,000.00	-	-	-	124,866.74
n inventories of subsidiary	214,361.23	171,720.77	-	-	-	42,640.46
	$1,718,952.98	$121,817.46	$2,291.98	$ -	$931,011.86	$ 912,050.56

Notes:
(1) Loss on current account with and investment in Reo Sales Corporation.
(2) Portion of rent paid in 1941 charged to reserve (see Schedule M).
(3) Reserves no longer required, transferred to capital surplus.
(4) Reserve no longer required, transferred to earned surplus (Schedule M).

CHANGES IN CAPITAL SURPLUS

				$ 77,540.28(1)		
$2,700,000.00	$ -	$ -		1,500,000.00(2)	$ -	$4,277,540.28

Notes:
(1) See Note (3) above.
(2) Transfer from capital stock account resulting from decrease in number of authorized shares of capital stock from 2,000,000 shares of $1 par value each to 500,000 shares of $1 par value each.

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Form 1121
Treasury Department
Internal Revenue Service

COMPLETED RETURN

UNITED STATES
CORPORATION EXCESS PROFITS TAX RETURN
For Calendar Year 1941

~~calendar year beginning~~ ~~1941 ending~~ ~~1942~~

1941

File Code 617 Serial No. 801903 District Mich (Collector's stamp)

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.
(Name)

South Washington Avenue,
(Street and number)

Lansing, (Post office) Ingham, (County) Michigan. (State)

Cash Check M. O.
First payment

Business group serial number entered on page 1, Form 1120 100

(a) Date of incorporation January 2, 1940 (b) State or country Michigan

(c) Collector's office in which your income tax return for the taxable year was filed Detroit, Michigan

(d) Is this a consolidated return? No If so, procure from the collector Form 851E, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.

(e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on government obligations specified in section 22 (b) (4) of the Internal Revenue Code? Not applicable

(f) Are you an acquiring corporation of a qualified component corporation as defined in section 740 of the Internal Revenue Code? Yes If so, and if you were actually in existence before January 1, 1940, do you elect to compute the average base period net income under the method prescribed in section 742 in lieu of the method prescribed in section 713?

(g) Are you a transferor or transferee upon an exchange (as defined by section 750 of the Internal Revenue Code) which occurred in a taxable year beginning after December 31, 1939? No

SPECIFIC DISCLAIMER

Unless you specifically disclaim in (1) or (2) below either the credit computed under the income method or the credit computed under the invested capital method, it is mandatory that both Schedules I and II and both Schedules A and B be completed before this form will be considered as a return. (The foregoing is applicable only to a corporation in existence prior to January 1, 1940.) If you are a foreign corporation, see also Instruction 22 (a).) For effect of disclaimer, see Instructions F and 22 (a).

(1) Do you disclaim the use of the credit computed under section 713—the income method? No

(2) Do you disclaim the use of the credit computed under section 714—the invested capital method? No

IF YOU HAVE NOT DISCLAIMED ONE METHOD, SCHEDULES I, II, A, AND B MUST BE COMPLETED.

EXCESS PROFITS NET INCOME COMPUTATION

Item and Instruction No.	LOSS SCHEDULE I. EXCESS PROFITS CREDIT BASED ON INCOME				
1.	[redacted] net [redacted] (computed without deduction of excess profits tax) (item 34 less items 37 and 39, page 1, Form 1120)			$ 2,559,974	29
2.	Add: Net long-term capital LOSS (item 11 (b), page 1, Form 1120)			2,056,548	16
3.	Total of items 1 and 2			$ 503,426	13
4.	Less: Net long-term capital GAIN (item 11 (b), page 1, Form 1120)	$ -			
5.	Net GAIN from sale or exchange of depreciable property held more than 18 months	25,750	50		
6.	Income from retirement or discharge of bonds, etc	-			
7.	Refunds and interest on Agricultural Adjustment Act taxes	-			
8.	Recoveries of bad debts	5,926	27		
9.	Dividends received credit adjustment (total of columns 2 and 4, Schedule E, Form 1120, minus item 39, page 1, Form 1120)	245	75		
10.	Additional charitable, etc., deductions	-			
11.	Abnormal income attributable to other years. (Attach statement)	-		31,922	52
12.	Total of items 4 to 11			$ 535,348	65
13.	[redacted] net income computed under income credit method (item 3 minus item 12)			$ 535,348	65
	SCHEDULE II. EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAL				
14.	Amount of item 13			11,922	82
15.	Add: 50 percent of interest on borrowed capital			-	
16.	Interest on government obligations. (See Question (e) above for election)			$ 523,425	83
17.	Total of items 14 to 16			-	
18.	Less: Dividends received credit adjustment (total of column 3, Schedule E, Form 1120, excluding dividends (actual or constructive) on stock of foreign personal-holding companies and dividends on stock which is not a capital asset) LOSS			$ 523,425	83
19.	[redacted] net [redacted] computed under invested capital credit method (item 17 minus item 18)				

EXCESS PROFITS TAX COMPUTATION

	Column 1	Col. 2 Rate	Column 3 Amount of Tax

Name and Internal Revenue Serial No.

SCHEDULE I. EXCESS PROFITS CREDIT BASED ON INCOME

1. Net income (computed without deduction of excess profits tax) (Item 34 less items 37 and 39, page 1, Form 1120)			$ 2,559,974	29
2. Add: Net long-term capital LOSS (item 11 (b), page 1, Form 1120)			2,056,548	16
3. Total of items 1 and 2			$ 503,426	13
4. Less: Net long-term capital GAIN (item 11 (b), page 1, Form 1120)	$			
5. Net GAIN from sale or exchange of depreciable property held more than 18 months	25,750	50		
6. Income from retirement or discharge of bonds, etc	-			
7. Refunds and interest on Agricultural Adjustment Act taxes	-			
8. Recoveries of bad debts	5,926	27		
9. Dividends received credit adjustment (total of columns 2 and 4, Schedule E, Form 1120, minus item 39, page 1, Form 1120)	245	75		
10. Additional charitable, etc., deductions	-			
11. Abnormal income attributable to other years. (Attach statement)	-			
12. Total of items 4 to 11			31,922	52
13. Net income computed under income credit method (item 3 minus item 12)			$ 535,348	65

SCHEDULE II. EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAL

14. Amount of item 13			$ 535,348	65
15. Add: 50 percent of interest on borrowed capital			11,922	82
16. Interest on government obligations. (See Question (e) above for election)			-	
17. Total of items 14 to 16			$ 523,425	83
18. Less: Dividends received credit adjustment (total of column 3, Schedule E, Form 1120, excluding dividends (actual or constructive) on stock of foreign personal-holding companies and dividends on stock which is not a capital asset)			-	
19. Net income computed under invested capital credit method (item 17 minus item 18)			$ 523,425	83

EXCESS PROFITS TAX COMPUTATION

			Column 1		Col. 2 Rate	Column 3 Amount of Tax	
20. Net income (item 13 or item 19, whichever is applicable)			$ 523,425	83			
21. Less: Specific exemption	$ 5,000	00					
22. Excess profits credit. (From Schedule A or B, whichever amount results in the lesser tax, unless the use of one of the methods has been disclaimed above; or from Schedule B if the corporation is required to use the invested capital method)	387,733	61					
23. Excess profits credit carry-over. (Attach statement)	485,246	49	877,980	10			
24. Adjusted excess profits net income (item 20 minus the sum of items 21, 22, and 23)			$ None				
25. Portion of item 24 (not in excess of $20,000); and tax at 35 percent					35%	$	
26. Portion of item 24 (in excess of $20,000 and not in excess of $50,000); and tax at 40 percent					40%		
27. Portion of item 24 (in excess of $50,000 and not in excess of $100,000); and tax at 45 percent					45%		
28. Portion of item 24 (in excess of $100,000 and not in excess of $250,000); and tax at 50 percent					50%		
29. Portion of item 24 (in excess of $250,000 and not in excess of $500,000); and tax at 55 percent					55%		
30. Portion of item 24 (in excess of $500,000); and tax at 60 percent					60%		
31. Excess profits tax (total tax in column 3 of items 25, 26, 27, 28, 29, and 30). (In case of certain exchanges to which section 710 (a) (2) is applicable, attach schedule showing computation under that section and enter the excess profits tax so computed as item 31)						$ None	
32. Amount, if any, due to application of section 734. (Attach schedule)						$	
33. Total excess profits tax (line 31 plus line 32)							
34. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation not used in computing item 42, page 1, Form 1120						$ None	
35. Balance of excess profits tax due							

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 15th day of May, 194✓

H. E. Klumb
(President or other principal officer) (State title)

NOTARIAL SEAL

Emma W. Schafer
(Signature of officer administering oath) (Title)
Notary Public, Ingham Co., Mich
My Commission Expires Jan 22, 194

CORPORATE SEAL

W. F. Kennedy
(Treasurer, Assistant Treasurer, or Chief Accounting Officer) (State title)

I/we swear (or affirm) that I am/we are the preparer(s) for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the excess profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this ..... day of ....., 194

Affidavit attached.

(Signature of person preparing the return)

(Signature of person preparing the return)

NOTARIAL SEAL

(Signature of officer administering oath) (Title)

(Name of firm or employer, if any)

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Respondent's Exhibit B.

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Schedule A.—EXCESS PROFITS CREDIT—BASED ON INCOME. (See Instruction 22 (b))

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1939, AND BEFORE JANUARY 1, 1940
(If additional columns are required, attach separate schedule)

Line No.	1. Year Ended Dec. 31, 1936	2. Year Ended Dec. 31, 1937	3. Year Ended Dec. 31, 1938	4. Year Ended Dec. 31, 1939
1. Normal-tax (or special-class) net income	$1525136.04	$2193928.82	$377961.19	$1746816.28
2. (a) Net capital gain used in computing line 1	-	-	-	-
(b) Net capital loss used in computing line 1	-	-	-	-
3. Difference between lines 1 and 2(a) (if a net capital gain), or total of lines 1 and 2(b) (if a net capital loss)	$1525136.04	$2193928.82	$377961.19	$1746816.28
4. Add: Securities which are capital assets deducted in computing line 1 as bad debts or as stock determined to be worthless (for taxable years beginning prior to January 1, 1939)	-	-	-	-
5. Net short-term capital gain (see Instruction 22 (b) (1) regarding net short-term capital loss carry-over)	-	-	-	-
6. Net long-term capital gain	-	-	-	-
7. Net gain from sale or exchange of property other than capital assets (for taxable years beginning prior to January 1, 1939)	-	-	-	-
8. Total of lines 3 to 7	$1525136.04	$2193928.82	$377961.19	$1746816.28
9. Less: Net long-term capital loss	$ -	$ -	$ -	$ -
10. Net loss from sale or exchange of property other than capital assets (for taxable years beginning prior to January 1, 1939)	-	-	-	-
11. Total of lines 9 and 10	$ -	$ -	$ -	$ -
12. Normal-tax (or special-class) net income (after applying section 711 (b) (2)) (line 8 minus line 11)	$1525136.04	$2193928.82	$377961.19	$1746816.28
13. Add: Dividends received credit. (See line 22, below)	-	-	-	-
14. Deductions on account of retirement or discharge of bonds, etc.	-	-	-	-
15. Casualty, demolition, and similar losses	-	-	-	-
16. Repayment of processing tax to vendees	-	-	-	-
17. (a) Abnormal judgment liabilities, etc. (attach statement)	-	-	-	-
(b) Abnormal expenditures for intangible drilling and development costs (attach statement)	-	-	-	-
(c) Other abnormal deductions (attach statement)	-	-	-	-
18. Capitalization of expenditures for advertising or promotion of good will (attach statement)	-	-	-	-
19. Net long-term capital loss. (See line 9, above)	-	-	-	-
20. Total of lines 12 to 19	$1525136.04	$2193928.82	$377961.19	$1746816.28
21. Less: Income from retirement or discharge of bonds, etc.	$ -	$ -	$ -	$ -
22. Dividends received from domestic corporations	-	-	-	-
23. Net long-term capital gain. (See line 6, above)	-	-	-	-
24. Net gain from sale or exchange of depreciable property held for more than 18 months	-	-	-	-
25. Total of lines 21 to 24	$ -	$ -	$ -	$ -
26. Excess profits net income (line 20 minus line 25)	$1525136.04	$2193928.82	$377961.19	$1746816.28

27. Net aggregate of columns 1, 2, 3, and 4 (see Instruction 22 (b) (4) (B) for computation of deficit in excess profits net income and substitution of zero for largest deficit figure. Attach schedule showing detailed computation) — $ -

28. Average base period net income—General average (line 27 divided by number of months in base period, multiplied by 12) — $ None

(Fill in lines 29 to 34 for computation of average base period net income where there were increased earnings in last half of base period)

29. Net aggregate of columns 3 and 4 (see Instruction 22 (b) (4) (C) regarding deficit in excess profits net income and limitation regarding taxable year ending after May 31, 1940)	$	
30. Net aggregate of columns 1 and 2 (see Instruction, line 29)	$	
31. Excess of line 29 over line 30	$	
32. One-half of line 31	$	
33. Line 29 plus line 32	$	
34. Line 33 divided by number of months in second half of base period, multiplied by 12	$	
35. Average base period net income—Increased earnings in last half of base period (line 34 or the highest excess profits net income for any taxable year in the base period, whichever is lesser)		$ -
36. 95 percent of line 28 or line 35, whichever is greater		$ -
37. Net capital addition $; or net capital reduction $ (attach schedule)		-
38. 8 percent of line 37, if a net capital addition (or 6 percent of line 37, if a net capital reduction)		$ None
39. Excess profits credit—based on income (line 36 plus line 38, if a net capital addition) (or line 36 minus line 38, if a net capital reduction)		

Schedule B.—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL. (See Instruction 22 (c))

Line No.	*Equity Invested Capital at the Beginning of the Taxable Year*
1. Money paid in for stock, or as paid-in surplus, or as a contribution to capital	$ -
2. Property paid in for stock, or as paid-in surplus, or as a contribution to capital	6031166.11
3. Distributions of earnings and profits in stock of the corporation	-
4. Accumulated earnings and profits	-
	-

19.	Net long-term capital loss. (See line 9, above)		-			-			-			-
20.	Total of lines 12 to 19	$	1525136	04	$	2193928	82	$	377961	19	$	4746816	28
21.	Less: Income from retirement or discharge of bonds, etc.	$	-		$	-		$	-		$	-	
22.	Dividends received from domestic corporations		-			-			-			-	
23.	Net long-term capital gain. (See line 6, above)		-			-			-			-	
24.	Net gain from sale or exchange of depreciable property held for more than 18 months		-			-			-			-	
25.	Total of lines 21 to 24	$	-		$	-		$	-		$	-	
26.	Excess profits net income (line 20 minus line 25)	$	1525136	04	$	2193928	82	$	377961	19	$	4746816	28
27.	Net aggregate of columns 1, 2, 3, and 4 (see Instruction 22 (b) (4) (B) for computation of deficit in excess profits net income and substitution of zero for largest deficit figure. Attach schedule showing detailed computation)										$		
28.	Average base period net income—General average (line 27 divided by number of months in base period, multiplied by 12)										$	None	

(Fill in lines 29 to 34 for computation of average base period net income where there were increased earnings in last half of base period)

29.	Net aggregate of columns 3 and 4 (see Instruction 22 (b) (4) (C) regarding deficit in excess profits net income and limitation regarding taxable year ending after May 31, 1940)	$	
30.	Net aggregate of columns 1 and 2 (see Instruction, line 29)	$	
31.	Excess of line 29 over line 30	$	
32.	One-half of line 31	$	
33.	Line 29 plus line 32	$	
34.	Line 33 divided by number of months in second half of base period, multiplied by 12	$	
35.	Average base period net income—Increased earnings in last half of base period (line 34 or the highest excess profits net income for any taxable year in the base period, whichever is lesser)		$ -
36.	95 percent of line 28 or line 35, whichever is greater		$ -
37.	Net capital addition $_____; or net capital reduction $_____ (attach schedule).		-
38.	8 percent of line 37, if a net capital addition (or 6 percent of line 37, if a net capital reduction)		-
39.	Base profits credit—based on income (line 36 plus line 38, if a net capital addition) (or line 36 minus line 38, if a net capital reduction)		$ None

Schedule B.—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL. (See Instruction 22 (c))

Line No.				
	Equity Invested Capital at the Beginning of the Taxable Year			
1.	Money paid in for stock, or as paid-in surplus, or as a contribution to capital			$ -
2.	Property paid in for stock, or as paid-in surplus, or as a contribution to capital			6031166 11
3.	Distributions of earnings and profits in stock of the corporation			-
4.	Accumulated earnings and profits			-
5.	Increase on account of gain on tax-free liquidation			-
6.	Total of lines 1 to 5			6031166 11
7.	Less: Distributions made prior to the taxable year not out of accumulated earnings and profits	$ -		
8.	Earnings and profits of another corporation required to be deducted by section 718 (b) (3)	-		
9.	Reduction on account of loss on tax-free liquidation (not in excess of line 4)	-		-
10.	Total of lines 7 to 9			-
11.	Equity invested capital at beginning of taxable year (line 6 minus line 10)			6031166 11
	Average Addition to Equity Invested Capital During the Taxable Year			
12.	Money paid in for stock, or as paid-in surplus, or as a contribution to capital	$ -		
13.	Property paid in for stock, or as paid-in surplus, or as a contribution to capital	-		
14.	Distributions of earnings and profits (other than earnings and profits of the taxable year) in stock of the corporation (see line 20, below)	-		
15.	Increase on account of gain on tax-free liquidation	-		
16.	25 percent of New Capital (see Instruction 22 (c) (1) (F) for computation of New Capital)	-		
17.	Total additions in lines 12 to 16			-
18.	Total of lines 11 and 17			6031166 11
	Average Reduction in Equity Invested Capital During the Taxable Year			
19.	Distributions not out of earnings and profits of the taxable year	$ -		
20.	Stock distributions from accumulated earnings and profits at beginning of year (see line 14, above)	-		
21.	Reduction on account of loss on tax-free liquidation (see line 9 for limitation)	-		-
22.	Total reductions in lines 19 to 21			-
23.	Average equity invested capital (line 18 minus line 22)			6031166 11
24.	Average borrowed capital (attach schedule)	608,700	94	
25.	Average borrowed invested capital (50 percent of line 24)			304,350 47
26.	Average invested capital (line 23 plus line 25)			6335516 58
27.	Total inadmissible assets	1111539	25	
28.	Total admissible and inadmissible assets	6989628	31	
29.	Percentage which line 27 is of line 28	23.5	%	
30.	Reduction on account of inadmissible assets 23.5 percent of line 26)			1488846 40
31.	Invested capital (line 26 minus line 30)			4846670 18
32.	Portion of line 31 (not in excess of $5,000,000); and credit at 8 percent	4846670 18	8%	387.733 61
33.	Portion of line 31 (in excess of $5,000,000); and credit at 7 percent	-	7%	-
34.	Excess profits credit—based on invested capital (line 32 plus line 33)			387,733 61

Respondent's Exhibit B.

Respondent's Exhibit B

REO MOTORS, INC.

LANSING, MICHIGAN

LIST OF SCHEDULES ATTACHED TO RETURN ON FORM 1121 FOR THE YEAR 1941

Copies of letters granting extensions of time for filing return

Affidavit re preparation of return

Schedule B, item 24 - Average borrowed capital

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Respondent's Exhibit B

COPY

TREASURY DEPARTMENT

Internal Revenue Service

Office of the Collector
District of Michigan

Detroit, Mich.

In replying refer to

April 10, 1942.

IT:JC:MSC

Form 1121

Reo Motors, Incorporated,
305 Baker Street,
Lansing, Michigan.

Gentlemen:

In compliance with your request of recent date, a further extension of time from April 15, 1942, to May 15, 1942, for filing your return of income for the calendar year 1941, is hereby granted.

In all cases where an extension of time is granted the Law provides that interest shall be collected at the rate of one-half of one per cent a month upon each installment, from the original due date thereof to the date of payment.

A copy of this letter must be attached to the return when it is filed as authority for the extension of time herein granted.

Respectfully,

GUY T. HELVERING, Commissioner.

By: (Signed) Giles Kavanagh,
Collector

Respondent's Exhibit B

COPY

TREASURY DEPARTMENT

Internal Revenue Service

Detroit, Michigan

In replying refer to:

IT:JC:MSC

March 14, 1942.

Form 1121

Reo Motors, Inc.,
Baker Street,
Lansing, Michigan.

Gentlemen:

IMPORTANT: PLEASE READ CAREFULLY

TENTATIVE RETURN MUST BE FILED

Receipt is acknowledged of your letter of recent date requesting for the reason given therein, extension of time within which to file your return of income for the calendar year 1941.

You are hereby granted an extension of time to April 15, 1942 within which to complete your return for the taxable year above-mentioned PROVIDED a tentative return is filed with the Collector of Internal Revenue for your district on or before March 15th (already filed) and payments made at that time of at least one-fourth of the total estimated tax shown thereon to be due.

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules shown on the form need not be filled in.

A copy of this letter MUST BE ATTACHED to the tentative and completed returns as authority for the extension of time herein granted.

Respectfully,

GUY T. HELVERING, Commissioner

GILES KAVANAGH, Collector

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Respondent's Exhibit B

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

Pursuant to instructions received from Mr. H. E. Hund, President of Reo Motors, Inc., Lansing, Michigan, I, E. F. Woleben, acting on behalf of Price, Waterhouse & Co., 1946 Penobscot Building, Detroit, Michigan, as adviser for the said Reo Motors, Inc., affirm that I prepared the attached return for the year ending December 31, 1941, which shows a net loss (line 19) of $523,425.83 and no tax payable on the basis of information furnished by the said Reo Motors, Inc., in connection with an examination of the financial statements of the company; that the information set out in the return and accompanying schedules correctly and fairly reflects the information furnished to or discovered by me during the course of the preparation of the return and that said information is true to the best of my information and belief.

E. F. Woleben

Subscribed and sworn to before me

this 14th day of May, 1942.

Dorothy B. Kuhl
Notary Public, Wayne County, Michigan.

My commission expires 6/24/45.

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Respondent's Exhibit B

R E O M O T O R S, I N C.

LANSING, MICHIGAN

AVERAGE BORROWED CAPITAL - YEAR 1941

Date 1941		Receipts or payments: Mortgage payable	Notes payable	Together	Net borrowed capital	Number of days	Dollars x days
January	1	$945,291.51	$147,753.84	$1,093,045.35	$1,093,045.35	6	$ 6,558,272.10
	6	-	70,450.00	70,450.00	1,022,595.35	1	1,022,595.35
	7	-	228,000.00	228,000.00	1,250,595.35	2	2,501,190.70
	9	169.80	122,753.84	122,923.64	1,127,671.71	1	1,127,671.71
	10	-	15,614.90	15,614.90	1,143,286.61	3	3,429,859.83
	13	7,417.99	-	7,417.99	1,135,868.62	1	1,135,868.62
	14	520.84	-	520.84	1,135,347.78	1	1,135,347.78
	15	-	104,341.19	104,341.19	1,031,006.59	2	2,062,013.18
	17	-	100,000.00	100,000.00	1,131,006.59	4	4,524,026.36
	21	250.00	-	250.00	1,130,756.59	11	12,438,322.49
February	1	-	43,882.90	43,882.90	1,086,873.69	4	4,347,494.76
	5	-	149,940.81	149,940.81	936,932.88	3	2,810,798.64
	8	19,673.90	243,460.74	263,134.64	673,798.24	2	1,347,596.48
	10	-	243,460.74	243,460.74	917,258.98	1	917,258.98
	11	2,799.25	-	2,799.25	914,459.73	4	3,657,838.92
	15	6,578.52	-	6,578.52	907,881.21	3	2,723,643.63
	18	28,730.00	-	28,730.00	879,151.21	3	2,637,453.63
	21	127,339.96	-	127,339.96	751,811.25	7	5,262,678.75
	28	47,500.00	-	47,500.00	704,311.25	8	5,634,490.00
March	8	6,578.52	-	6,578.52	697,732.73	3	2,093,198.19
	11	8,030.73	-	8,030.73	689,702.00	3	2,069,106.00
	14	-	75,000.00	75,000.00	764,702.00	6	4,588,212.00
	20	250.00	-	250.00	764,452.00	11	8,408,972.00
	31	-	5,684.08	5,684.08	758,767.92	9	6,828,911.28
April	9	19,068.15	-	19,068.15	739,699.77	3	2,219,099.31
	12	7,099.04	100,000.00	98,900.96	832,600.73	3	2,497,802.19
	15	-	1,242.43	1,242.43	831,358.30	6	4,988,149.80
	21	250.00	-	250.00	831,108.30	15	12,466,624.50
May	6	-	4,005.67	4,005.67	827,102.63	4	3,308,410.52
	0	1,873.23	-	1,873.23	825,229.40	7	5,776,605.80
		5,536.84	-	5,536.84	819,692.56	6	4,918,155.36
	25	250.00	-	250.00	819,442.56	4	3,277,770.24
	27	9,055.13	-	9,055.13	810,387.43	15	12,155,811.45
June	11	-	3,784.35	3,784.35	806,603.08	5	4,033,015.40
	16	5,536.84	-	5,536.84	801,066.24	4	3,204,264.96
	20	250.00	-	250.00	800,816.24	5	4,004,081.20
	25	12,337.73	-	12,337.73	788,478.51	2	1,576,957.02
	27	6,125.43	-	6,125.43	782,353.08	10	7,823,530.80
July	7	-	3,683.08	3,683.08	778,670.00	4	3,114,680.00
	11	1,325.00	-	1,325.00	777,345.00	10	7,773,450.00
	21	250.00	-	250.00	777,095.00	5	3,885,475.00
	26	24,000.00	-	24,000.00	753,095.00	13	9,790,235.00
	Forward	$596,494.61	$156,600.39	$ 753,095.00	$ 753,095.00	220	$186,076,939.93

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Date 1941		Receipts or payments: Mortgage payable	Notes payable	Together	Net borrowed capital	Number of days	Dollars x days
Forward		$596,494.61	$156,600.39	$ 753,095.00	$ 753,095.00	220	$186,076,939.93
August	8	175,000.00	-	175,000.00	578,095.00	3	1,734,285.00
	11	-	100,000.00	100,000.00	478,095.00	3	1,434,285.00
	14	2,914.45	-	2,914.45	475,180.55	6	2,851,083.30
	20	250.00	-	250.00	474,930.55	7	3,324,513.85
	27	21.92	-	21.92	474,908.63	13	6,173,812.19
September	9	21,174.51	56,600.39	77,774.90	397,133.73	1	397,133.73
	10	197,133.73	-	197,133.73	200,000.00	8	1,600,000.00
	18	4,457.12	-	4,457.12	195,542.88	4	782,171.52
	22	250.00	-	250.00	195,292.88	28	5,468,200.64
October	20	250.00	-	250.00	195,042.88	16	3,120,686.08
November	5	1,150.34	-	1,150.34	193,892.54	14	2,714,495.56
	19	250.00	-	250.00	193,642.54	8	1,549,140.32
	27	48,000.00	-	48,000.00	145,642.54	23	3,349,778.42
December	20	250.00	-	250.00	145,392.54	11	1,599,317.94
	31	48,000.00	-	48,000.00	97,392.54	-	-
		$ 97,392.54	$ -	$ 97,392.54	$ 97,392.54	365	$222,175,843.48

Average daily borrowed invested capital $ 608,700.94

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Respondent's Exhibit B

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COMPLETED RETURN

UNITED STATES
CORPORATION INCOME AND DECLARED VALUE EXCESS-PROFITS TAX RETURN 1942
For Calendar Year 1942

or fiscal year beginning xxxxxxxx, 1942, ending xxxxxxxx, 1943

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.
(Name)

1331 South Washington Avenue
(Street and number)

Lansing (Post office) | Ingham (County) | Michigan (State)

Kind of business: Manufacture of motor vehicles

Business group serial number (from Instruction M): 105

File Code: 6-7
Serial No. 1504346
District (Collector's name)

Cash | Check | M. O.
First Payment
$

NORMAL-TAX NET INCOME COMPUTATION

Items and Instructions No.			
	GROSS INCOME		
1	Gross sales (where inventories are an income-determining factor) $; Less: Returns and allowances $	24,529,572	05
2.	Less: Cost of goods sold. (From Schedule A)	18694,122	05
3.	Gross profit from sales	5835,450	00
4.	Gross receipts (where inventories are not an income-determining factor) $	-	
5.	Less: Cost of operations. (From Schedule B)	-	
6.	Gross profit where inventories are not an income-determining factor	-	
7.	Interest on loans, notes, mortgages, bonds, bank deposits, etc.	25,446	52
8.	Interest on corporation bonds, etc. -0- $	-	
9.	(a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (iii))	-	
	(b) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)	-	
10.	Rents Computation proved	36,482	72
11.	Royalties	-	
12.	(a) Net gain from sale or exchange of capital assets. (From Schedule C)	-	
	(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)	(211,366	44)
13.	Dividends. (From Schedule E)	44,260	00
14.	Other income. (State nature)	24,233	56
15.	Total income in items 3, and 6 to 14, inclusive		5,754,508 38
	DEDUCTIONS DETROIT DIVISION		
16.	Compensation of officers. (From Schedule F)	145,067	75
17.	Salaries and wages (not deducted elsewhere)	679,483	30
18.	Rent	54,324	67
19.	Repairs	644,802	62
20.	Bad debts. (From Schedule G)	567,510	55
21.	Interest	46,161	27
22.	Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 34)	524,266	51
23.	Contributions or gifts paid. (From Schedule I)	17,506	00
24.	Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)	-	
25.	Depreciation. (From Schedule J)	2 ,313	34
26.	Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)	-	
27.	Net operating loss deduction. (Submit statement)	2,073,154	16
28.	Amortization of emergency facilities. (Submit schedule)	-	
29.	Other deductions authorized by law. (From Schedule K)	443,441	33
30.	Total deductions in items 16 to 29, inclusive		5,463,692 44
31.	Net income for declared value excess-profits tax computation (item 15 minus item 30)		290,811 94
32.	Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (iii)) $ Less amortizable bond premium $		
33.	Total of lines 31 and 32		290,811 94
34.	Less: Declared value excess-profits tax		

INT. REV. AGT. IN CHARGE
Credit Sec. 3306(b)
I.R.C. $ 211,401.62
Tax Year 1942
Sep. 2 $ 34,445.62
8/29/42

2. Less: Cost of goods sold. (From Schedule A)		18694,122 05	
3. Gross profit from sales		5835,450 00	
4. Gross receipts (where inventories are not an income-determining factor) $			
5. Less: Cost of operations. (From Schedule B)		-	
6. Gross profit where inventories are not an income-determining factor			
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.		25,446 52	
8. Interest on corporation bonds, etc. $ $		-	
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (iii))		-	
(b) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)		-	
10. Rents	Computation proved	36,482 72	
11. Royalties		-	
12. (a) Net gain from sale or exchange of capital assets. (From Schedule C)		-	
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)		(211,368 44)	
13. Dividends. (From Schedule E)		44,260 00	
14. Other income. (State nature)		24,233 56	
15. Total income in items 3, and 6 to 14, inclusive			$ 2,754,506 38

DEPT. REV. AGT. IN CHARGE
DETROIT DIVISION

Credit Sec. 3308(b)
I.R.C. $
Tax Year 1942
Sep. 1 $

8/29/46

DEDUCTIONS			
16. Compensation of officers. (From Schedule F)		$ 145,067 75	
17. Salaries and wages (not deducted elsewhere)		679,483 30	
18. Rent		54,364 67	
19. Repairs		644,802 62	
20. Bad debts. (From Schedule G)		567,510 55	
21. Interest		46,161 [illegible]	
22. Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 34 below)		524,266 51	
23. Contributions or gifts paid. (From Schedule I)		17,506 00	
24. Losses by fire, storm, shipwreck, or other casualty or theft. (Submit schedule)		-	
25. Depreciation. (From Schedule J)		261,313 34	
26. Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)		-	
27. Net operating loss deduction. (Submit statement)		2,079,154 16	
28. Amortization of emergency facilities. (Submit schedule)		-	
29. Other deductions authorized by law. (From Schedule K)		443,441 33	
30. Total deductions in items 16 to 29, inclusive			5,463,602 44
31. Net income for declared value excess-profits tax computation (item 15 minus item 30)			- 290,811 94
32. Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (ii)) $ Less amortizable bond premiums, $			
33. Total of lines 31 and 32			- 290,811 94
34. Less: Declared value excess-profits tax			-
35. Net income			$ 290,811 94
36. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 9 (a) and 32)			-
37. Adjusted net income			$ 290,811 94
38. Less: Income subject to excess profits tax	$ -		
39. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, above)	34 00		
40. Normal-tax net income			$ 290,777 94

TOTAL INCOME AND DECLARED VALUE EXCESS-PROFITS TAX

41. [illegible]	$ 116,311 18	
[illegible]	17,620 93	
[illegible]		
[illegible]		
[illegible]		
44. Total income and declared value excess-profits taxes due		$ 98,690 25

AFFIDAVIT. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 7 day of May 194[illegible]

NOTARIAL SEAL — [illegible] Notary Public (Title)

NOTARY PUBLIC, INGHAM COUNTY, MICH.
MY COMMISSION EXPIRES DEC. 22, 1948

[illegible] (President or other principal officer) (State title)

CORPORATE SEAL — A. T. Kearney, Comptroller (Treasurer, Assistant Treasurer, or Chief Accounting Officer) (State title)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this ____ day of ____, 194[illegible]

NOTARIAL SEAL

(Signature of officer administering oath) (Title)

(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

Respondent's Exhibit C.

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Page 3 DECLARED VALUE EXCESS-PROFITS TAX COMPUTATION. (See Computation Instructions)

Line No.		Col. 1	Col. 2 Rate	Col. 3
1.	Net income for declared value excess-profits tax computation (item 31, page 1)	$ 290,777 94		
2.	Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1943 (or for your period ended June 30, 1943, if your income tax taxable year began in 1943 and ended on or after July 31, 1943)	$ 30,000,000 00		
3.	10 percent of line 2	$ 3000,000 00		
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, page 1)	34 00	3,000,034 00	
5.	Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4)		$ None	
6.	Amount taxable at 6.6 percent (5 percent of line 2, but not more than line 5); and tax			6.6% $
7.	Balance taxable at 13.2 percent (line 5 minus line 6, column 1); and tax		$	13.2%
8.	Total declared value excess-profits tax (total of line 6, column 3, and line 7, column 3)			$ None

INCOME TAX COMPUTATION. (See Computation Instructions)

NORMAL TAX COMPUTATION

DOMESTIC CORPORATIONS WITH NORMAL-TAX NET INCOMES NOT OVER $25,000

9.	Normal-tax net income (item 40, page 1)	$		
10.	Portion of line 9 (not in excess of $5,000); and tax at 15 percent	$	15%	$
11.	Portion of line 9 (in excess of $5,000 and not in excess of $20,000); and tax at 17 percent		17%	
12.	Portion of line 9 (in excess of $20,000 and not in excess of $25,000); and tax at 19 percent		19%	
13.	Portion of line 9 (in excess of $25,000); and tax at 31 percent		31%	
14.	Total normal tax (total tax in column 3 of lines 10, 11, 12, and 13)			$

DOMESTIC CORPORATIONS WITH NORMAL-TAX NET INCOMES OF OVER $25,000 AND FOREIGN CORPORATIONS ENGAGED IN BUSINESS WITHIN THE UNITED STATES IRRESPECTIVE OF AMOUNT OF NORMAL-TAX NET INCOME

15.	Normal-tax net income (item 40, page 1)	$ 290,777 94		
16.	Normal tax (24 percent of line 15)		24%	$ 69,786

SURTAX COMPUTATION

17.	Net income (item 35, page 1)	$ 290,811 94		
18.	Less: Income subject to excess profits tax	$ None		
19.	Dividends received credit (85 percent of column 2, Schedule E (excluding certain dividends received on preferred stock of a public utility), but not in excess of 85 percent of line 17 minus 18)	34 00		
20.	Dividends paid on certain preferred stock if taxpayer is a public utility	-	34 00	
21.	Surtax net income		$ 290,777 94	

CORPORATIONS WITH SURTAX NET INCOMES NOT OVER $50,000

22.	Portion of line 21 (not in excess of $25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return)	$	10%	$
23.	Portion of line 21 (in excess of $25,000 and not in excess of $50,000); and tax at 22 percent (or 24 percent in the case of a consolidated return)		22%	
24.	Total surtax in column 3 of lines 22 and 23			$

CORPORATIONS WITH SURTAX NET INCOMES OF OVER $50,000

25.	Surtax net income (line 21 above)	$ 290,777 94		
26.	Surtax (16 percent of line 25) (or in the case of a consolidated return, 18 percent of the consolidated surtax net income)		16%	$ 46,524 47
27.	Total normal and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable)			$ 116,311 12
28.	Total tax (line 27 or line 33, Schedule C)			$ 116,311 12

TAX COMPUTATION FOR REGULATED INVESTMENT COMPANIES

29.	Adjusted net income (item 37, page 1, but computed without regard to section 47 (c))	$		
30.	Add: Net operating loss deduction (item 27, page 1)			
31.	Total of lines 29 and 30	$		
32.	Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)			
33.	Adjusted net income (after applying section 362 (b) (1))	$		
34.	Less: Basic surtax credit (excluding capital gain dividends) computed without regard to paragraphs (2) and (3) of section 27 (b). (Submit schedule)			
35.	Supplement Q net income			
36.	Normal tax (24 percent of line 35)		24%	$
37.	Net income (item 35, page 1, but computed without regard to section 47 (c))	$		
38.	Add: Net operating loss deduction (item 27, page 1)			
39.	Total of lines 37 and 38	$		
40.	Less: Excess of net long-term capital gain over short-term capital loss (From Schedule C)			
41.	Net income (after applying section 362 (b) (2))	$		
42.	Less: Dividends (other than capital gain dividends) paid including consent dividends credit. (Submit schedule)			
43.	Supplement Q surtax net income	$		

15. Normal-tax net income (item 40, page 1)			$ 290,777 94		
16. Normal tax (24 percent of line 15)				24%	$ 69,786

SURTAX COMPUTATION

17. Net income (item 35, page 1)			$ 290,811 94		
18. Less: Income subject to excess profits tax	$ None				
19. Dividends received credit (85 percent of column 3, Schedule E (omitting certain dividends received on preferred stock of a public utility), but not in excess of 85 percent of line 17 minus 18)	34	00			
20. Dividends paid on certain preferred stock if taxpayer is a public utility	-		34	00	
21. Surtax net income			$ 290,777	94	

CORPORATIONS WITH SURTAX NET INCOMES NOT OVER $50,000

22. Portion of line 21 (not in excess of $25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return)	$	10%	$	
23. Portion of line 21 (in excess of $25,000 and not in excess of $50,000); and tax at 22 percent (or 24 percent in the case of a consolidated return)		22%		
24. Total surtax in column 3 of lines 22 and 23			$	

CORPORATIONS WITH SURTAX NET INCOMES OF OVER $50,000

25. Surtax net income (line 21 above)	$ 290,777 94			
26. Surtax (16 percent of line 25) (or in the case of a consolidated return, 18 percent of the consolidated surtax net income)		16%	$ 46,524	47
27. Total normal and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable)			$ 116,311	12
28. Total tax (line 27 or line 33, Schedule C)			$ 116,311	12

TAX COMPUTATION FOR REGULATED INVESTMENT COMPANIES

29. Adjusted net income (item 37, page 1, but computed without regard to section 47 (c))	$			
30. Add: Net operating loss deduction (item 27, page 1)				
31. Total of lines 29 and 30	$			
32. Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)				
33. Adjusted net income (after applying section 362 (b) (1))	$			
34. Less: Basic surtax credit (excluding capital gain dividends) computed without regard to paragraphs (2) and (3) of section 27 (b). (Submit schedule)				
35. Supplement Q net income	$			
36. Normal tax (24 percent of line 35)		24%	$	
37. Net income (item 35, page 1, but computed without regard to section 47 (c))	$			
38. Add: Net operating loss deduction (item 27, page 1)				
39. Total of lines 37 and 38	$			
40. Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)				
41. Net income (after applying section 362 (b) (2))	$			
42. Less: Dividends (other than capital gain dividends) paid including consent dividends credit. (Submit schedule)				
43. Supplement Q surtax net income	$			
44. Surtax (16 percent of line 43)		16%		
45. Net long-term capital gain. (From Schedule C)	$			
46. Less: Net short-term capital loss. (From Schedule C)	$			
47. Capital gain dividends paid. (Submit schedule)				
48. Excess subject to tax	$			
49. Tax (25 percent of line 48)		25%		
50 Total tax in lines 36, 44, and 49			$	

Schedule A.—COST OF GOODS SOLD. (See Instruction 2)
(Where inventories are an income-determining factor)

Inventory at beginning of year	$ 2692,214	21
Material or merchandise bought for manufacture or sale	20174,052	93
Wages and salaries		
Other costs per books. (Attach itemized schedule)	1188,518	31
Total	24054,786	05
Less: Inventory at end of year	5360,664	00
Cost of goods sold (enter as item 2, page 1)	$ 18694,122	05

Schedule B.—COST OF OPERATIONS
(Where inventories are not an income-determining factor)

Salaries and wages	$
Other costs (to be detailed):	
(b)	
(c)	None
(d)	
(e)	
Total (enter as item 5, page 1)	$

Schedule C.—Separate Schedule C (Form 1120) should be secured and used in reporting sales and exchanges of capital assets and filed with and as a part of this return.

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruct.

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Contract price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvements Subsequent to Acquisition or March 1, 1913	6. Depreciation Allowed (or allowable) Since Acquisition or March 1, 1913 (Furnish details)	7. Gain or Loss (enter in 3 year column of appropriate part of schedule) Part I
		$	$	$	$	$
Total net gain (or loss). (Enter as item 12 (b), page 1)						$

Supplemental information required for Schedule D

State with respect to each item of property reported in Schedule D: (1) how property was acquired By purchase (2) whether at time of sale or exchange (a) purchaser owned directly or indirectly more than 50 percent in value of your outstanding stock, (b) where purchaser was a corporation, more than 50 percent in value of its capital stock and 50 percent in value of your capital stock was owned directly or indirectly by or for the same individual or his family, and (c) where purchaser was a corporation, whether more than 50 percent in value of its capital stock was owned directly or indirectly by you No If so, state name and address of purchaser

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Respondent's Exhibit C

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Respondent's Exhibit C

REO MOTORS, INC.

LANSING, MICHIGAN

STATEMENT IN EXPLANATION OF INCREASES IN SALARIES GIVEN SINCE OCTOBER 3, 1942 (QUESTION 11)

Increases were made in accordance with the terms of an established salary rate schedule and plan and did not require prior approval of the National War Labor Board or Commissioner of Internal Revenue. However, a bonus was paid to certain employees during the month of December, 1942 and this schedule was approved by the Salary Stabilization Unit of the Bureau of Internal Revenue as per the authorization attached hereto.

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Schedule E.—INCOME FROM DIVIDENDS

Page 4

1. Name or Address of Paying Corporation	2. Domestic Corporations Taxable Under Chapter 1 Internal Revenue Code	3. Foreign Corporations	4. Other Corporations
Ford Motors, Ltd. (Britain)		$ 44,220 00	
Washington-Jefferson Realty Company	$ 40 00		
Totals	$ 40 00	$ 44,220 00	$ -
Total of columns 2, 3, and 4 (Enter as item 13, page 1)			$ 44,260 00

*Except dividends received from corporations organized under the China Trade Act, 1922, and corporations entitled to the benefits of section 251 of the Internal Revenue Code, which dividends should be entered in column 4.

Dividends on share accounts in Federal savings and loan associations in case of share accounts issued prior to March 28, 1942, should not be listed, but the amount should be included in items 10 and 11, page 1; dividends on share accounts issued on or after March 28, 1942, should be reported in column 4.

Schedule F.—COMPENSATION OF OFFICERS

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Business	Percentage of Corporation's Stock Owned		4. Amount of Compensation
			5. Common	6. Preferred	
Schedules F and F-1 attached					$
Total compensation of officers (Enter as item 16, page 1)					$

NOTE.—Schedule F-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of $75,000 was paid to any officer or employee.

Schedule G.—BAD DEBTS. (See Instruction 20) (See notes 1 and 2)

1. Taxable Year	2. Net Income Reported	3. Sales on Account	4. Bad Debts of Corporation If No Reserve is Carried on Books (See note 2)	If Corporation Carries a Reserve— 5. Gross Amount Added to Reserve	6. Amount Charged Against Reserve
1938	$	$	$	$	$
1939		Schedule G attached			
1940					
1941					
1942					

1. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐.
2. Not including securities which are capital assets and which became worthless within the taxable year. Such securities which became worthless within the year should be reported in Schedule C.

Schedule H.—TAXES. (See Instruction 22)

Nature	Amount
Real and personal property	$ 112,259 59
Social security	363,938 67
Federal capital stock	37,500 00
Franchise fees	10,075 48
Michigan intangible tax	492 77
Total (Enter as item 22, page 1)	$ 524,266 51

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 23)

Name and Address of Organization	Amount
Schedule I attached	$
Total (Enter as item 23, page 1, subject to 5 percent limitation.) (See Instruction 23)	$

Schedule J.—DEPRECIATION. (See Instruction 25)

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis (Do not include land or other nondepreciable property)	4. Assets Fully Depreciated in Use at End of Year	5. Depreciation Allowed (or allowable) in Prior Years	6. Remaining Cost or Other Basis To Be Recovered	7. Estimated Life Used in Accumulating Depreciation	8. Estimated Remaining Life From Beginning of Year	9. Depreciation Allowable This Year
		$	$	$	$			$
Schedule J attached								
Total (Enter as item 25, page 1)								

NOTE.—Schedule F-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of $75,000 was paid to any officer or employee.

Schedule C.—BAD DEBTS. (See Instruction 20) (See notes 1 and 2)

1. Taxable Year	2. Net Income Reported	3. Bains on Amount	4. Bad Debts of Corporation If No Reserve Is Carried on Books (See note 2)	If Corporation Carries a Reserve— 5. Gross Amount Added to Reserve	6. Amount Charged Against Reserve
1938	$	$	$	$	$
1939		Schedule C attached			
1940					
1941					
1942					

1. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☒.
2. Not including securities which are capital assets and which became worthless within the taxable year. Such securities which became worthless within the year should be reported in Schedule C.

Schedule H.—TAXES. (See Instruction 22)

Nature	Amount
Real and personal property	$ 112,259 59
Social security	363,938 67
Federal capital stock	37,500 00
Franchise fees	10,075 48
Michigan intangible tax	492 77
Total (Enter as item 22, page 1)	$ 524,266 51

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 23)

Name and Address of Organization	Amount
Schedule I attached	$
Total (Enter as item 23, page 1, subject to 5 percent limitation.) (See Instruction 23)	$

Schedule J.—DEPRECIATION. (See Instruction 25)

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis (Do not include land or other nondepreciable property)	4. Amount Fully Depreciated in Prior Years as of End of Year	5. Depreciation Allowed (or allowable) in Prior Years	6. Remaining Cost or Other Basis To Be Recovered	7. Estimated Life Used in Accumulating Depreciation	8. Estimated Remaining Life From Beginning of Year	9. Depreciation Allowable This Year
		$	$	$	$			$
		Schedule J attached						
Total (Enter as item 25, page 1)								$

Schedule K.—OTHER DEDUCTIONS. (See Instruction 29)

Schedule K attached

QUESTIONS

1. Date of incorporation January 2, 1940
2. State or country Michigan
3. State collector's office where the corporation's return for the preceding year was filed Detroit, Michigan
4. The corporation filed its last return on a ~~Calendar~~ basis
   Located at Lansing, Michigan
5. Number of places of business 14
6. Did the corporation during the taxable year have any Government contracts or subcontracts? (Answer "yes" or "no") Yes. If answer is "yes," state the approximate aggregate gross dollar amount billed during the taxable year under all such contracts and/or subcontracts. (See Instruction G-(3).) $ 20,000,000
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No (If so, an additional return on Form 1120 H must be filed.)
8. Files a consolidated return? No (If so, procure from the collector of internal revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.)
9. If this is not a consolidated return: (a) did you own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? Yes; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of your voting stock? No (If either answer is "yes," attach separate schedule showing: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
10. Is this return made on the basis of cash receipts and disbursements? Accrual basis No If not, describe fully in separate statement.
11. Did the corporation at any time after October 3, 1942, and before the end of its taxable year have in its employ more than eight individuals? (Answer "yes" or "no") Yes If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate after October 3, 1942? (Answer "yes" or "no") Yes. If answer to second question is "yes," attach statement explaining all such increases or decreases. If any of such increases or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in Instruction 16, attach also a copy of the authorization for each of such increases or decreases.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower Cost or Market whichever lower. If other basis is used, explain fully in separate statement, giving date inventory was last reconciled with stock.
13. Did the corporation make a return of information on Forms 1096 and 1099 for the calendar year 1942 (see Instruction G-(1))? Yes
14. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no") Yes (If answer is "yes," attach statement as required by Instruction K-(3).)

Respondent's Exhibit C

Respondent's Exhibit C

Reo Motors, Inc. DEC 16 1942

"3. Some employees who were offered jobs by other companies and whose loss would have jeopardized our work, were at their request kept in our employ on the basis of a maximum salary and a minimum bonus."

Other reasons for requesting approval of the payment of additional compensation or bonus as indicated in your letter are:

"1. A large percentage of our department heads are working from 60 to 70 hours a week, and a smaller percentage have been working quite regularly from 75 to 95 and even 100 hours per week.

"2. Employees in the shop working on an hourly or piece work basis and working less hours per week than salaried men are in many cases making more money than even our superintendents. This condition makes it almost impossible to get men to take jobs of responsibility at the salaries we can offer.

"3. Other automobile companies doing similar work are in some cases paying two, three times and more than our men are receiving. The fact that our men are worth more is, we believe, not only borne out by our performance but the fact that many of them have been offered more by other companies. Some of course have accepted - but because they could not be replaced the loss of many more would seriously handicap us in our war effort.

"4. We have made considerable reduction to the Government on the two major projects on which work has already been started. In one case we made a reduction of 15% and in another case we made a reduction of roughly 5% after 55% of the contract had been cancelled."

On the basis of the facts set forth in your application dated December 12, 1942, it is ruled that the payment of the additional compensation or bonus for the year 1942 to the Key employees, other employees, superintendents, and foremen, in the amounts indicated in each schedule may be made in accordance with Section 1002.14 (a) and (b) of the Commissioner's Regulations promulgated December 2, 1942.

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Schedule L.—BALANCE SHEETS (See Instructions L)

[1]	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
1. Cash		$		$
2. Notes and accounts receivable	$		$	
Less: Reserve for bad debts				
3. Inventories (Itemize in separate schedule)				
4. Investments in governmental obligations:				
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$		$	
(b) Obligations of the United States:				
(1) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941				
(2) United States savings bonds and Treasury bonds issued prior to March 1, 1941				
(3) Treasury notes issued on or after December 1, 1940; and all other obligations of the United States issued on or after March 1, 1941				
(c) Obligations of instrumentalities of the United States:				
(1) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941				
(2) Obligations issued by other instrumentalities of the United States prior to March 1, 1941				
(3) Obligations of all instrumentalities of the United States issued on or after March 1, 1941				
5. Other investments (Itemize)				
6. Capital assets:				
(a) Depreciable assets (Itemize in separate schedule)	$		$	
Less: Reserve for depreciation				
(b) Depletable assets	$		$	
Less: Reserve for depletion				
(c) Land				
7. Other assets (Itemize)	$		$	
8. TOTAL ASSETS		$		$
LIABILITIES				
9. Accounts payable		$		$
10. Bonds, notes, and mortgages payable:				
(a) With original maturity of less than 1 year	$		$	
(b) With original maturity of 1 year or more				
11. Accrued expenses (Itemize)	$		$	
12. Other liabilities (Itemize)	$		$	
13. Surplus reserves (Itemize in separate schedule)				
14. Capital stock:				
(a) Preferred stock	$		$	
(b) Common stock				
15. Paid-in or capital surplus				
16. Earned surplus and undivided profits				
17. TOTAL LIABILITIES		$		$

Schedule L attached

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:		13. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	$
(a) Cash	$	14. Adjusted net income (Item 37, page 1)	
(b) Stock of the corporation		15. Nontaxable and partially exempt income:	
(c) Other property		(a) Interest on:	
2. Contributions (excess over 5 percent limitation)		(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income and excess-profits taxes		(2) Obligations of the United States:	
4. Income taxes claimed as a credit in whole or in part in item 42, page 1		(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940, and Treasury bills issued prior to March 1, 1941	
5. Federal taxes paid on tax-free covenant bonds		(ii) United States savings bonds and Treasury bonds owned in the principal amount of $5,000 or less, issued prior to March 1, 1941	
6. Excess of capital losses over capital gains		(iii) United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued prior to March 1, 1941	
7. Additions to surplus reserves (list separately):		(3) Obligations of instrumentalities of the United States:	
(a)		(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941	
(b)			
8. Other unallowable deductions:			
(a)			
(b)			
9. Adjustments not recorded on books (Itemize):			
(a)			
(b)			

Schedule M attached

7. Other assets (itemize)	$		$	
8. TOTAL ASSETS		$		$
LIABILITIES				
9. Accounts payable		$		$
10. Bonds, notes, and mortgages payable:				
(a) With original maturity of less than 1 year	$		$	
(b) With original maturity of 1 year or more				
11. Accrued expenses (itemize)	$		$	
12. Other liabilities (itemize)	$		$	
13. Surplus reserves (itemize in separate schedule)				
14. Capital stock:				
(a) Preferred stock	$		$	
(b) Common stock				
15. Paid-in or capital surplus				
16. Earned surplus and undivided profits				
17. TOTAL LIABILITIES		$		$

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:		12. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	$
(a) Cash	$	14. Adjusted net income (item 37, page 1)	
(b) Stock of the corporation		15. Nontaxable and partially exempt income:	
(c) Other property		(a) Interest on:	
2. Contributions (excess over 5 percent limitation)	Schedule M	(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income and excess-profits taxes		(2) Obligations of the United States:	
4. Income taxes claimed as a credit in whole or in part in item 42, page 1	attached	(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941	
5. Federal taxes paid on tax-free covenant bonds		(ii) United States savings bonds and Treasury bonds owned in the principal amount of $5,000 or less, issued prior to March 1, 1941	
6. Excess of capital losses over capital gains		(iii) United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued prior to March 1, 1941	
7. Additions to surplus reserves (list separately):		(3) Obligations of instrumentalities of the United States:	
(a)		(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941	
(b)		(ii) Obligations issued by other instrumentalities of the United States prior to March 1, 1941	
8. Other unallowable deductions:		(b) Other nontaxable income (itemize):	
(a)		(1)	
(b)		(2)	
9. Adjustments not recorded on books (itemize):		16. Charges against surplus reserves (itemize):	
(a)		17. Adjustments not recorded on books (itemize):	
(b)		18. Sundry credits to earned surplus (itemize):	
10. Sundry debits to earned surplus (itemize):			
(a)		19. Total of lines 13 to 18	$
(b)			
11. Earned surplus and undivided profits at close of the taxable year (Schedule L)			
12. Total of lines 1 to 11	$		

EXCESS PROFITS TAX. (See Instructions for Form 1121)

Excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes

If a personal service corporation (other than a member of an affiliated group of corporations filing a consolidated return) claims before the close of the taxable year that it is not to be subject to the excess profits tax, it shall be exempt from such tax and the provisions of Supplement S, Chapter 1, shall apply to the shareholders in such corporation who were such shareholders on the last day of the taxable year of the corporation. (Attach Form 1121Ps)

If corporation claims exemption under section 727 of the Internal Revenue Code, state basis of claim

If an excess profits tax return is not being filed for the reason that it is claimed that the excess profits net income computed under the invested capital method is not greater than $5,000, the following Schedule N should be filled in. The completion of Schedule N does not constitute the filing of an excess profits tax return.

Schedule N.—EXCESS PROFITS NET INCOME COMPUTATION

1. Normal-tax net income (computed without credit for income subject to excess profits tax) (item 40 plus item 38, page 1)	$	6. Dividends received credit adjustment (item 33, page 1, excluding the sum of (a) dividends received (actual or constructive) from foreign personal holding companies, and (b) dividends received on stock held primarily for sale to customers by a dealer in securities, minus item 38, page 1)	$
2. Net short-term capital gain (do not enter net short-term capital loss)		7. Net gain from sale or exchange of capital assets (item 12 (a), page 1)	
3. 80 percent of interest on borrowed capital		8. Income from retirement or discharge of bonds, etc	
4. Adjustment to net operating loss deduction under section 711 (a) (2) (L)		9. Refunds and interest on Agricultural Adjustment Act taxes	
5. Total of lines 1 to 4	$	10. Recoveries of bad debts	
		11. Total of lines 6 to 10	$
12. Excess profits net income (for purpose of determining necessity for filing return) (line 5 minus line 11)			$

Respondent's Exhibit C

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Respondent's Exhibit C

REO MOTORS, INC.

LANSING, MICHIGAN

LIST OF SCHEDULES ATTACHED TO RETURN ON FORM 1120

FOR THE YEAR 1942

Copy of letter granting extension of time for filing return
Affidavit regarding preparation of return
Information regarding ownership of stocks of other corporations as required by Questions 9(a) and 14
Statement in explanation of increases in salaries given since October 3, 1942, as required by Question 11
Copy of letter from Salary Stabilization Unit of Bureau of Internal Revenue in connection with answer to Question 11

Schedule A	- Cost of goods sold - other costs
Schedule C	- Capital gains and losses
Schedule D	- Gains and losses from sales or exchanges of property other than capital assets
Item 14	- Other income
Schedule F	- Compensation of officers
Schedule F-1	- Compensation of officers and employees in excess of $75,000
Schedule G	- Bad debts
Schedule I	- Contributions or gifts paid
Schedule J	- Depreciation
Item 27	- Net operating loss deduction
Schedule K	- Other deductions authorized by law
Schedule L	- Balance sheets
Schedule M	- Reconciliation of net income and analysis of surplus and undistributed profits
Schedule M-1	- Analysis of changes in non-deductible reserves and capital surplus
Form 1118	- Statement in support of credit claimed by domestic corporation for taxes paid or accrued to a foreign country or possession of the United States

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Total net short-term capital gain (or loss) ... $

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS

N.Y. Vacant lots Larchmont, Wash.Blvd.Bldgs.bds.	1937	$ 1,675 00	$ 1,000 00	$ 128 00	$ -	$ 547 00
	1933	970 70	900 00	-	-	70 70
Book Bldg.&Addns.bds.	1937	1,322 95	1,997 50	-	-	(674 55)

Total net long-term capital gain (or loss) ... $ (56 85)

Net capital gain (or loss) (Enter net capital gain as item 12 (a), page 1, Form 1120[1]). (No net capital loss allowable) ... $ None

COMPUTATION OF ALTERNATIVE TAX

USE ONLY IF THERE IS AN EXCESS OF NET LONG-TERM CAPITAL GAINS OVER NET SHORT-TERM CAPITAL LOSSES

1. Net income (item 35, page 1, Form 1120) ... $
2. Net long-term capital gain ... $
3. Less: Net short-term capital loss ... $
4. Excess of net long-term capital gain over net short-term capital loss ... $
5. Net income reduced by excess in line 4 (line 1 minus line 4) ... $
6. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941 (item 36, page 1, Form 1120) ... $
7. Adjusted net income (line 5 minus line 6) ... $
8. Less: Income subject to excess profits tax (item 38, page 1, Form 1120) ... $
9. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37, minus item 38, page 1, Form 1120) ... $
10. Balance subject to normal tax ... $

NORMAL TAX COMPUTATION

DOMESTIC CORPORATIONS WITH NORMAL-TAX NET INCOMES OF NOT OVER $25,000

	Column 2	Col. 3	Column 3
11. Adjusted normal-tax net income (line 10)	$		
12. Portion of line 11 (not in excess of $5,000), and tax at 15 percent	$	15%	$
13. Portion of line 11 (in excess of $5,000 and not in excess of $20,000), and tax at 17 percent		17%	
14. Portion of line 11 (in excess of $20,000 and not in excess of $25,000), and tax at 19 percent		19%	
15. Portion of line 11 (in excess of $25,000), and tax at 31 percent		31%	
16. Total normal tax (total tax in column 3 of lines 12, 13, 14, and 15)			$

DOMESTIC CORPORATIONS WITH NORMAL TAX NET INCOMES OVER $25,000 AND FOREIGN CORPORATIONS ENGAGED IN BUSINESS WITHIN THE UNITED STATES IRRESPECTIVE OF AMOUNT OF NORMAL-TAX NET INCOME

17. Adjusted normal-tax net income (line 10)	$		
18. Normal tax (24 percent of line 17)		24%	$

SURTAX COMPUTATION

19. Net income from line 5, above ... $
20. Less: Income subject to excess profits tax ... $
21. Dividends received credit (85 percent of column 2, Schedule E, excluding certain dividends) ... $
22. Dividends paid on certain preferred [illegible] ... $
23. Adjusted surtax net income ... $

CORPORATIONS WITH SURTAX NET INCOME NOT OVER $50,000

24. Portion of line 23 (not in excess of $25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return)	$	10%	$
25. Portion of line 23 (in excess of $25,000 and not in excess of $50,000), and tax at 22 percent (or 24 percent in the case of a consolidated return)		22%	
26. Total surtax in column 3 of lines 24 and 25			$

CORPORATIONS WITH SURTAX NET INCOME OVER $50,000

27. Adjusted surtax net income (line 23)	$		
28. Surtax (16 percent of line 27) (or in the case of a consolidated return 18 percent of the consolidated surtax net income)		16%	$

29. Partial tax (line 16 or 18 plus 26, or 28, whichever is applicable) ... $
30. 25% of line 4 ... $
31. Alternative tax (line 29 plus line 30) ... $
32. Total normal tax and surtax (line 27, page 2, Form 1120) ... $
33. Tax liability (line 31 or 32, whichever is lower). (Enter as line 28, page 2, Form 1120) ... $

Note 1. Companies taxable under section 204 and having losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses, etc., shall attach a schedule corresponding to Schedule D, Form 1120M.

Note 2. In lieu of this limitation, companies taxable under section 204 or section 207 (a) (1) or (3) are limited to an amount not in excess of (1) the corporation surtax net income (computed without regard to gains or losses from sales or exchanges of capital assets) or (2) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders, whichever is the lower.

Note 3. For companies taxable under section 207 (a) (1) or (3), all references to "items" or "line" numbers, Form 1120, shall be considered as references to the appropriate "items" or "lines" in Form 1120M. It will be necessary for such companies to substitute, in lieu of lines 11 to 28, inclusive, a computation conforming to that on page 2 of Form 1120M.

16-61600-1 ☆ U. S. GOVERNMENT PRINTING OFFICE

Respondent's Exhibit C

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Respondent's Exhibit C

TREASURY DEPARTMENT

Internal Revenue Service

Detroit, Michigan

In replying refer to: March 11, 1943.

IT:JC:MMC

FORM 1120

Reo Motors, Incorporated,
1331 Sou. Washington Avenue,
Lansing, Michigan.

Gentlemen: IMPORTANT: PLEASE READ CAREFULLY

TENTATIVE RETURN MUST BE FILED

Receipt is acknowledged of your letter of recent date requesting for the reason given therein, extension of time within which to file your return of income for the calendar year 1942.

You are hereby granted an extension of time to May 15, 1943 within which to complete your return for the taxable year above mentioned PROVIDED a tentative return is filed with the Collector of Internal Revenue for your district on or before March 18, 1943 and payments made at that time of at least one-fourth of the total estimated tax shown thereon to be due. (see attached instructions)

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules shown on the form need not be filled in.

A copy of this letter MUST BE ATTACHED to the tentative and completed returns as authority for the extension of time herein granted.

Respectfully,

GUY T. HELVERING, Commissioner

(Signed) Giles Kavanagh

GILES KAVANAGH, Collector

Respondent's Exhibit C

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

I, E. F. Woleben, acting on behalf of Price, Waterhouse & Co., 1946 Penobscot Building, Detroit, Michigan, as adviser for Reo Motors, Inc., affirm that pursuant to instructions received from Mr. H. E. Hund, President, I prepared the attached Federal corporation income and declared value excess-profits tax return for the year ending December 31, 1942, which shows a normal tax net income (line 40) of $290,777.94 and a total tax payable of $98,620.25 on the basis of information furnished by the said Reo Motors, Inc. in connection with an examination of the financial statements of the company; that the information set out in the return and accompanying schedules correctly and fairly reflects the information furnished to or discovered by me during the course of the preparation of the return and that said information is true to the best of my information and belief.

E. F. Woleben

Subscribed and sworn to before me
this 11 day of May, 1943.

Lena M. Caroline
Notary Public, Wayne County, Michigan.
My commission expires 10/11/46.

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Respondent's Exhibit C

COPY

TREASURY DEPARTMENT
Bureau of Internal Revenue
Salary Stabilization Unit
14th Floor, Penobscot Bldg.
Detroit, Mich.

Refer to
C:SSU
CHL

DEC. 16, 1942

Reo Motors, Inc.
Lansing, Michigan

Attention: H. E. Hund, President

Sirs:

Reference is made to your application dated December 11, 1942 containing three requests for approval of increases in compensation, salaries, bonuses, etc., as follows:

1. Additional compensation or bonus, as shown in column 1.

2. Proposed new yearly salary for the various positions, column 3.

3. Permission to pay departmental and general foremen $2.50 per hour for Sunday or seventh day work.

Affixed to your application are shown Salary Schedules 1 a and 1 b - for key employees; 2 a and 2 b - for other employees; 3 - for superintendents; 4 - for general foremen and 5 - for departmental foremen. In the last column of each schedule is shown the proposed salary rate range which you desire to use for the future and in another column in each schedule is also shown the proposed bonus or additional compensation for which approval is requested.

You state that due to the following factors your salary structure is completely out of balance:

"1. We have a group of older employees who expected additional compensation or bonus based on 3% of our earnings and whose salaries as a result are abnormally low.

"2. We have another small group of employees comprising men who had to be brought from the outside to fill certain positions and who could not be procured except at salaries higher than those we were paying.

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Respondent's Exhibit C

R E O M O T O R S, I N C.

LANSING, MICHIGAN

OTHER INCOME	YEAR 1940
Refund of excise taxes	$ 8,223.50
Settlement received from agent for excessive commissions paid in a prior year (1940)	8,185.44
Recoveries on bad debts	1,476.42
Credit balances written off	2,035.81
Miscellaneous	4,312.41
Total (Item 14, page 1 of return)	$24,233.58

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Respondent's Exhibit C

Rae Motors, Inc. DEC 16 1942

Your second request is that the present method of paying additional compensation, except for most excellent performance, be discontinued and that the new salary rate as shown in the third column (captioned "1942 total") be approved. This, in effect, is requesting that the salary rate for 1942, plus the additional compensation requested, be used as the new salary rate for the future. Since the proposed salary rate is within the proposed salary rate range, shown in the last column, which is within the range of other similar industries, it is ruled that you may proceed accordingly with the payment of the salaries of the employees listed in the various schedules. The proposed Salary Rate Ranges for future use are also approved.

The payment of $2.50 per hour to your departmental and general foremen for Sunday or seventh day work is approved with the understanding that the payment thereof in addition to the regular salary of the particular employee is within the salary rate range in such employee's classification.

This ruling is based upon the information contained in your letter. If the information is subsequently found to be incorrect, this ruling shall have no force or effect.

Respectfully,

(Signed) C. D. Leiter
Head, Regional Office.

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Respondent's Exhibit C

Schedule A

REO MOTORS, INC.

LANSING, MICHIGAN

COST OF GOODS SOLD - OTHER COSTS - YEAR 1942

Supplies	$ 283,608.34
Rearrangement of plant machinery and equipment	9,249.91
Perishable tools	416,028.46
Gasoline and oil	43,439.98
Gas, water, heat and power	213,380.02
Tool amortization	68,084.54
Scrap	(111,737.87)
Traveling	21,003.91
Freight and cartage	81,239.28
Insurance	70,688.15
Telephone and telegraph	21,880.18
Equipment rentals	11,770.95
Product guarantee	46,595.89
Miscellaneous	11,287.17
Total	$1,168,518.91

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SCHEDULE C (Form 1120)
Treasury Department
Internal Revenue Service

UNITED STATES
SCHEDULE OF CAPITAL GAINS AND LOSSES
For Calendar Year 1942

~~For fiscal year beginning ..... 1942 and ending ..... 1943~~

(Insurance companies using this form should follow notes 1 to 3, inclusive)

This schedule must be filed with and as a part of the corporation's income tax return, Form 1120 or Form 1120 M, for the taxable year, in case of sale or exchange of capital assets.[1]

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.
(Name)

1331 South Washington Avenue
(Street and number)

Lansing, Michigan
(Post Office and State)

Do not file this form if the corporation did not sell or exchange any capital assets during the taxable year.

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Contract price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvements Subsequent to Acquisition or March 1, 1913	6. Depreciation Allowed (or allowable) Since Acquisition or March 1, 1913 (Furnish details)	7. Gain or Loss (column 3 plus column 6 minus the sum of columns 4 and 5)
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR NOT MORE THAN 6 MONTHS						
			None			
Net short-term capital gain (or loss) for the taxable year						
Net short-term capital loss of preceding taxable year (not in excess of the net income for such year[2]). (Deduct from total net short-term capital gain in column 7.) (Do not add to net short-term capital loss in column 7)						
Total net short-term capital gain (or loss)						
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS						
N.Y. [illegible]cant lots Larchmont,	1937	1,575 00	1,000 00	128 00	-	547 00
Wash.Blvd.Bldgs.bds.	1933	970 70	900 00	-	-	70 70
Book Bldg.&Addns.bds.	1937	1,322 95	1,997 50	-	-	(674 55)
Total net long-term capital gain (or loss)						(56 85)
Net capital gain (or loss). (Enter net capital gain as item 12 (a), page 1, Form 1120[3]). (No net capital loss allowable)						None

COMPUTATION OF ALTERNATIVE TAX

USE ONLY IF THERE IS AN EXCESS OF NET LONG-TERM CAPITAL GAINS OVER NET SHORT-TERM CAPITAL LOSSES

1	Net income (item 35, page 1, Form 1120)	
2	Net long-term capital gain	
3	Less: Net short-term capital loss	
4	Excess of net long-term capital gain over net short-term capital loss	
5	Net income reduced by excess in line 4 (line 1 minus line 4)	
6	Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941[4] (item 36, page 1, Form 1120)	
7	Adjusted net income (line 5 minus line 6)	
8	Less: Income subject to excess profits tax (item 38, page 1, Form 1120)	
9	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37, minus item 38, page 1, Form 1120)	
10	Balance subject to normal tax	

NORMAL TAX COMPUTATION

DOMESTIC CORPORATIONS WITH NORMAL TAX NET INCOMES OF NOT OVER $25,000

		Column 1	Col. 2	Column 3
11	Adjusted normal-tax net income (line 10)			
12	Portion of line 11 (not in excess of $5,000), and tax at 15 percent		15%	
13	Portion of line 11 (in excess of $5,000 and not in excess of $20,000), and tax at 17 percent		17%	

Schedule D

R E O M O T O R S, I N C.

LANSING, MICHIGAN

GAINS OR LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS - YEAR 1942

Description of property	Date acquired	Gross sales price	Cost	Expense of sale	Depreciation allowable	Gain or (loss)
Land, Lansing, Michigan		$27,000.00	$ 90,885.00	$ -	$ -	($ 63,885.00)
Land and building, Broadway, Chicago, Illinois		20,000.00	175,342.76	-	41,089.03	(114,253.73)
Machinery and equipment	Various	28,596.43	178,000.71	2,413.50	120,166.04	(31,651.74)
Autos and trucks	do.	150.00	4,576.51	-	3,045.33	(1,381.18)
Furniture and fixtures	do.	107.20	1,535.46	-	1,231.47	(196.79)
		$75,853.63	$450,340.44	$2,413.50	$165,531.87	($211,368.44) (Item 12(b), page 1 of return)

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Respondent's Exhibit C

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Respondent's Exhibit C

R E O M O T O R S, I N C.

LANSING, MICHIGAN

COMPENSATION OF OFFICERS YEAR 1942

Name and address of officer	Official title	Time devoted to business	Percentage of corporation's stock owned: Common	Preferred	Amount of compensation
H. E. Hurd, Lansing	President	Entire	-	-	$110,800.00
J. J. Dervin do.	Vice-president	do.	-	-	9,725.05
R. F. McKim do.	Secretary	do.	-	-	4,700.00
R. A. Smith do.	Ass't-secretary	do.	-	-	3,087.50
Glen Whisler do.	Treasurer	do.	-	-	8,500.00
A. R. Kenny do.	Ass't-treasurer	do.	-	-	8,255.20
Total (Item 16, page 1 of return)					$145,067.75

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Respondent's Exhibit C

Schedule G

REO MOTORS, INC.

LANSING, MICHIGAN

BAD DEBTS — YEAR 1942

Taxable year*	Sales on account	Gross amount added to reserve	Amounts charged against reserve
1940	$ 2,574,417.40	$ 17,067.88	$ 693.65
1941	8,310,943.40	68,156.75	3,156.75
1942	24,529,572.05	309,348.61	23,637.82

SUMMARY

Addition to reserve as provision for bad debts (above)	$309,348.61
Loss on claim against closed bank, charged to reserve on books	258,161.94
Together (Item 20, page 1 of return)	$567,510.55

* Taxpayer incorporated January 2, 1940.

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Respondent's Exhibit C

Schedule K

REO MOTORS, INC.

LANSING, MICHIGAN

OTHER DEDUCTIONS AUTHORIZED BY LAW - YEAR 1942

Stationery and supplies	$ 63,061.59
Gasoline and oil	12,369.83
Traveling and entertainment	53,598.14
Telephone and telegraph	40,560.28
Postage	13,997.79
Memberships and dues	5,972.11
Policy adjustments	19,749.55
Freight and cartage	11,332.53
Cash discounts allowed	12,592.58
Commissions to outsiders	16,129.65
Advertising	27,964.62
Heat, light, water and gas	16,829.52
Insurance	23,421.90
Compensation claims	5,600.00
Dealer promotion	2,100.00
Credit and collection expense	4,143.45
Delivery expense	9,573.32
Moving and rearranging administrative offices	7,575.27
Capital stock expense	17,564.53
Legal, accounting and other professional fees	33,794.44
Directors' fees and expenses	4,960.50
Miscellaneous	40,550.33
Total (Item 29, page 1 of return)	$443,441.93

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Respondent's Exhibit C

Schedule I

REO MOTORS, INC.

LANSING, MICHIGAN

CONTRIBUTIONS OR GIFTS PAID - YEAR 1942

Ingham County War Fund	$ 7,500.00
Sparrow Hospital Building Fund	5,000.00
Army Ordnance Endowment Fund	2,000.00
Navy Relief Society	1,000.00
American Red Cross	35.00
Radio Station WJIM Christmas Fund	400.00
Army and Navy Recreation League	275.00
Disabled American Veterans of World War	100.00
Sight Saving Committee, Lions Club	25.00
Ingham County Tuberculosis Society	51.00
A. M. E. Church	10.00
Church of God	10.00
United Service Organizations	600.00
Total (Item 23, page 1 of return)	$17,506.00

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R E O M O T O R S, I N C.

LANSING, MICHIGAN

DEPRECIATION - YEAR 1942

Kind of property	Remaining unrecovered cost at December 31, 1941	Adjustments to physical inventory	Remaining unrecovered cost at December 31, 1941 after adjustment	Additions at cost	Unrecovered cost of items sold or otherwise disposed of	roperty
Land improvements	$ -	$ 7,093.84	$ 7,093.84	$ -	$ -	
Buildings	891,886.33	134,095.76	1,025,982.09	-	-	
Building equipment	485.00	347,799.55	348,284.55	-	-	
Machinery	532,268.61					
Factory equipment	551,937.02					
Experimental and drafting	16,350.97					
Power and heating	21,413.22	(21,680.96)	1,186,067.37	38,337.32	57,004.09	g
Electrical equipment	64,188.64					
Clubhouse equipment	6,807.04					
Unclassified plant	14,782.83					
Autos and trucks	5,427.25	-	5,427.25	8,131.97	995.35	
Furniture and fixtures	13,660.45	46,287.71	59,948.16	25,180.85	59.23	
Branch:						
Buildings	85,274.28	18,945.97	104,220.25	-	79,761.05	
Machinery	915.11					
Operating equipment	13,090.91	-	14,006.02	2,204.31	830.58	
Furniture and fixtures	4,044.74	-	4,044.74	123.92	244.76	
Service cars	5,824.00	-	5,824.00	1,795.79	535.83	

Respondent's Exhibit C

Schedule J

R E O M O T O R S, I N C.

LANSING, MICHIGAN

DEPRECIATION - YEAR 1942

Remaining unrecovered cost at December 31, 1941	Adjustments to physical inventory	Remaining unrecovered cost at December 31, 1941 after adjustment	Additions at cost	Unrecovered cost of items sold or otherwise disposed of	Depreciation allowable for year 1942	Remaining unrecovered cost at December 31, 1942
$ -	$ 7,093.84	$ 7,093.84	$ -	$ -	$ 886.73	$ 6,207.11
891,886.33	134,095.76	1,025,982.09	-	-	44,701.67	981,280.42
485.00	347,799.55	348,284.55	-	-	17,184.49	331,100.06
532,268.61)						
551,937.02)						
16,350.97)						
21,413.22)	(21,680.96)	1,186,067.37	38,337.32	57,004.09	175,836.50	991,564.10
64,188.64)						
6,807.04)						
14,782.83)						
5,427.25	-	5,427.25	8,131.97	995.35	2,112.47	10,451.40
13,660.45	46,287.71	59,948.16	25,180.85	59.23	10,379.65	74,690.13
85,274.28	18,945.97	104,220.25	-	79,761.05	2,120.25	22,338.95
915.11)	-	14,006.02	2,204.31	830.58	2,923.21	12,456.54
13,090.91)						
4,044.74	-	4,044.74	123.92	244.76	817.16	3,106.74
5,824.00	-	5,824.00	1,795.79	535.83	4,351.21	2,732.75
					$261,313.34 (Item 25, page 1 of return)	

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Respondent's Exhibit C

Item 27

R E O M O T O R S, I N C.

LANSING, MICHIGAN

NET OPERATING LOSS DEDUCTION - YEAR 1942

Statutory loss for the year 1940 (See 1941 income tax return)			$ 576,410.68
Net operating loss carryover from the year 1941:			
Statutory loss as shown in return		$2,559,374.29	
Add- Excess of Federal capital stock tax paid for the year ended June 30, 1942 over amount claimed as deduction in 1941 income tax return (Schedule M)		25,500.00	
Together		$2,585,474.29	
Deduct- Excess of amount taken as a deduction for the year 1941 over amount of franchise fee paid (Schedule M)		2,020.13	
Statutory loss as adjusted		$2,583,454.16	
Deduct:			
Net operating loss carryover from the year 1940	$576,410.68		
Capital loss *	504,300.00	1,080,710.68	1,502,743.48
Together (Item 27, page 1 of return)			$2,079,154.16

* Capital loss as shown in return	$2,056,548.16	
Less- Loss on dissolution in 1941 of wholly-owned domestic subsidiary company includible in net operating loss carryover without limitations (Section 23 (g)(4) of the Internal Revenue Code as amended by the Revenue Act of 1942)	1,552,248.16	
Capital loss as adjusted	$ 504,300.00	

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Respondent's Exhibit C

Schedule L

R E O M O T O R S, I N C.

LANSING, MICHIGAN

BALANCE SHEETS - DECEMBER 31, 1941 AND DECEMBER 31, 1942

	Beginning of taxable year		End of taxable year	
A S S E T S	Amount	Total	Amount	Total
Cash		$ 305,482.48		$ 1,877,048.51
Notes and accounts receivable	$1,587,119.08		$3,833,864.87	
Less- Reserve for bad debts	95,000.00	1,492,119.08	380,710.79	3,453,154.08
Inventories:				
Raw material	$ 211,404.22		$ 561,174.97	
Finished and partly finished products	2,290,817.62		4,286,708.31	
Supplies	189,992.37	2,692,214.21	512,780.72	5,360,664.00
Other investments:				
Investment in subsidiaries	$ 152,516.88		$ 292,012.90	
Land contracts receivable and miscellaneous	48,941.55	201,458.43	74,348.68	366,361.58
Capital assets:				
Depreciable assets-				
Buildings and equipment	$1,624,744.34		$1,503,894.26	
Machinery and equipment	2,167,850.01		2,137,179.73	
Total depreciable assets	$3,792,594.35		$3,641,073.99	
Less- Reserve for depreciation	2,906,272.02	886,322.33	2,892,792.41	748,281.58
Depletable assets		-		-
Land		382,556.45		251,671.45
Other assets:				
Advances to subsidiaries, less reserves	$ 350,792.83		$ 232,970.26	
Post-war refund of excess profits tax	-		52,000.00	
Claims vs. closed banks, less reserve	13,906.31		-	
R. F. C. suspense account	15,657.62		-	
Deferred charges	150,610.61	640,967.37	162,739.08	447,709.34
Total assets	$	$6,601,120.35		$12,504,890.54
L I A B I L I T I E S				
Accounts payable		$ 591,742.82		$ 1,081,822.04
Advances received from U. S. Government on contracts		-		2,481,660.09
Bonds, notes and mortgages payable:				
With original maturity of less than 1 year	$ -		$ -	
With original maturity of 1 year or more	97,392.54	97,392.54	-	-
Provision for Federal income and excess profits tax		-		1,265,000.00
Accrued expenses:				
Taxes	$ 93,192.53		$ 283,020.56	
Other	156,974.34	250,166.87	337,249.61	620,270.17
Other liabilities:				
Deferred income		57,597.07		6,931.95
Surplus reserves:				
Contingencies and miscellaneous	$ 280,252.52		$ 739,837.47	
For possible loss on liquidation of assets	130,000.00		-	
For obsolescence in inventories	124,866.74	535,119.26	-	739,837.47
Capital stock:				
Common stock, less held in treasury		465,000.00		465,000.00
Paid-in or capital surplus		4,277,540.28		4,319,024.82
Earned surplus and undivided profits		326,561.51		1,525,344.00
Total liabilities		$6,601,120.35		$12,504,890.54

Respondent's Exhibit C

Schedule M

REO MOTORS, INC.

LANSING, MICHIGAN

RECONCILIATION OF NET INCOME AND ANALYSIS OF SURPLUS AND UNDIVIDED PROFITS

Adjusted net income (Item 37, page 1 of return)		$ 230,811.94
Loss on sale of assets other than capital assets on basis of cost (Schedule D)		211,368.44
Depreciation on basis of cost (Schedule J)		261,313.34
Development expenses deferred on books		56,391.49
Adjustment of property taxes to basis of taxes assessed during 1942		23,402.80
Increase in equity in net assets of foreign subsidiary companies credited on books as follows:		
Profit and loss	$18,732.49	
Earned surplus	41,304.31	60,036.80
Net operating loss carryover (Item 27)		2,079,158.16
Charges against surplus reserves:		
Obsolescence in inventories		124,876.74
Claims against closed banks		258,161.94
Portion of rent paid during 1942 charged against reserve		16,520.83
Aluminum scrap loss		1,234.22
Compensation claims		5,500.00
Intercompany profits in inventories		42,540.46
Amount of franchise fee paid during 1942 in excess of amount charged to profit and loss account		2,020.13
		$3,434,733.29
Deduct:		
Loss on sale of capital assets per books	$ 54,301.15	
Depreciation per books	66,743.55	
Development expenses deferred on books at December 31, 1941 but claimed as deduction in the 1941 income tax return	72,355.31	
Dividend received from subsidiary company applied on books in reduction of investment	44,220.00	
Additions to reserves (Schedule M-1)-		
Contingencies	455,000.00	
Capital stock transfer fees	10,000.00	
Repairs to coaches	18,000.00	
Legal and professional fees	25,353.73	
State income and franchise taxes	15,000.00	
Excess of accrued bonuses over actual liability therefor	2,837.04	
Excess of amount of capital stock tax paid for year ended June 30, 1942 over amount provided therefor at December 31, 1941	25,500.00	
Provision for Federal taxes on income	1,213,000.00	2,003,510.80
		$1,431,282.49
Earned surplus and undivided profits as shown by balance sheet at close of preceding taxable year		326,561.51
		$1,757,844.00
Less- Dividend paid in cash during 1942		232,500.00
Earned surplus and undivided profits at close of taxable year (Schedule L)		$1,525,344.00

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Respondent's Exhibit C

Schedule M-1

R E O M O T O R S, I N C.

LANSING, MICHIGAN

ANALYSIS OF CHANGES IN NON-DEDUCTIBLE RESERVES AND CAPITAL SURPLUS - YEAR 1942

Title of reserve	Balance at December 31, 1941	Provision charged to profit and loss	Other additions	Deductions	Balance at December 31, 1942
Reserves deducted from assets in balance sheet:					
Reserve for obsolescence in inventories	$124,866.74	$ -	$ -	$124,866.74(1)	$ -
Reserve for possible loss on investments in subsidiary companies	48,653.05	-	-	-	48,653.05
Reserve for possible loss on land contracts	6,715.90	-	-	-	6,715.90
Reserve for loss on claims against closed banks	278,921.89	-	-	7,754.93(2) 258,161.94(3)	13,005.02
Reserves included elsewhere in balance sheet:					
Reserve for legal and other professional fees	-	25,953.75	-	-	25,953.75(4)
Reserve for state income and franchise taxes	-	15,000.00	-	-	15,000.00(4)
Reserve for capital stock transfer fees	-	10,000.00	-	-	10,000.00
Reserve for repairs to coaches	-	18,000.00	-	-	18,000.00
Reserve for contingencies	280,252.52	455,000.00	-	16,520.83(5) 5,600.00(6) 1,294.22(7)	711,837.47
Reserve for possible loss on disposition of facilities not used in operations	130,000.00	-	-	96,270.39(9) 33,729.61(2)	-
Reserve for unearned profit in inventories of subsidiary companies	42,640.46	-	-	42,640.46(8)	-
	$912,050.56	$523,953.75	$ -	$586,839.12	$849,165.19

Notes:
(1) Obsolete materials written off to extent of reserve (See Schedule M)
(2) Reserves no longer required, transferred to capital surplus
(3) Loss on claim against closed bank (See Schedule M)
(4) Included in other accrued liabilities in balance sheet
(5) Portion of rent paid in 1942 charged against reserve (See Schedule M)
(6) Claim for workmen's compensation awarded claimant by State Labor Board (See Schedule M)
(7) Scrap loss charged against reserve (See Schedule M)
(8) Transferred to profit and loss; reported as income for the year 1941
(9) Credited to profit and loss account

CHANGES IN CAPITAL SURPLUS

Capital surplus	$4,277,540.28	$ -	$ 7,754.93(1) 33,729.61(1)	$ -	$4,319,024.82

Note:
(1) See Note (2) above

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Respondent's Exhibit C

REO MOTORS, INC.

LANSING, MICHIGAN

INFORMATION REGARDING OWNERSHIP OF STOCKS OF OTHER CORPORATIONS AS REQUIRED BY QUESTIONS 9(a) AND 14

YEAR 1942

Name and address	Percentage of stock owned	Date acquired (Note)	Collector's office in which income tax returns of such corporations were filed
Domestic corporation:			
Sagamore Hill Land Company, Lansing, Michigan	66-2/3%	January 2, 1940	Detroit, Mich.
Foreign corporations:			
Reo Motor Company of Canada, Ltd., Toronto, Ontario	100	January 2, 1940	-
Reo Motors, Ltd., England	100	January 2, 1940	-

Note- The stocks of the above-listed affiliated companies were acquired by the taxpayer corporation from Reo Motor Car Company (the predecessor company) under a plan of reorganization dated September 20, 1939, and approved by the District Court of the United States for the Eastern District of Michigan, Southern Division, October 9, 1939, and confirmed December 2, 1939.

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Respondent's Exhibit C

Form 1118 (1942) Page

STATEMENT IN SUPPORT OF CREDIT CLAIMED BY DOMESTIC CORPORATION FOR TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR A POSSESSION OF THE UNITED STATES

For Calendar Year 1942

Or fiscal year beginning XXXXXXXXXXXXXXXXXX, 1942, and ending XXXXXXXXXXXXXXXXX, 19..

Name of Corporation: Reo Motors, Inc.

Address: 1331 South Washington Avenue, (Street and number) Lansing, (City or town) Michigan

SCHEDULE A—CREDIT CLAIMED AGAINST INCOME TAX

Claim for credit is made by the domestic corporation named above, based on income (Received or accrued) ... 19.. and ended ... 19.. for taxes (Paid or accrued) as follows:

1. Normal-tax net income from all sources (computed without (1) credit for income subject to excess profits tax and (2) for any income, war-profits, and excess-profits taxes paid or accrued to foreign countries or possessions of the United States) .....

11. Total United States income tax before credit for foreign taxes .....

Taxes Paid or Accrued During the Taxable Year to a Foreign Country or a Possession of the United States

Name of foreign country or possession imposing tax .....

1. Net income from sources in this foreign country or possession (exclusive of dividends received) which (converted at an exchange rate of .....[1]) equals in dollars (reported in corporation (In foreign money) return on line .....) .....
2. Dividends received from sources in this foreign country or possession (In foreign money) which (converted at an exchange rate of .....[2]) equals in dollars (reported in corporation income tax return on line .....) .....
3. Total net income from sources in this foreign country or possession computed without deduction for any income, war-profits taxes imposed by any foreign country or possession of the United States (reported in corporation income tax return on line .....)[3] .....
4. Amount of tax paid or accrued with respect to Item 1 (evidenced by attached receipt or return) ..... which (converted at an exchange rate of .....[4]) equals in dollars .....
5. Amount of tax paid or accrued with respect to Item 2 by withholding at the source (evidenced by attached return) .....[5] which (converted at an exchange rate of .....[6]) equals in dollars .....
6. Amount of tax deemed to have been paid or accrued with respect to Item 2 (Item 11, Schedule C, of this form) .....
7. Total of taxes paid or accrued (sum of Items 4, 5, and 6) .....
8. Ratio of net income from sources in this foreign country or possession to normal-tax net income from all sources (Item 3 divided by Item 1) .....
9. Amount of tax which may be claimed as credit under limitation of Section 131 (b) (1) (Item 11, multiplied by Item 8, unless Item 7 is less than such amount, in which case Item 7 should be entered here)[7] .....
10. Statute imposing tax entered under Item 4 ..... (To be stated fully and clearly so as to be easily identified)
11. Statute imposing tax entered under Item 5 ..... (To be stated fully and clearly so as to be easily identified)

SUMMARY OF INCOME RECEIVED AND TAXES PAID, AS SHOWN IN SCHEDULES A

Name of country or possession	Column A Income or loss[8]	Name of country or possession	Column B Taxes
Schedule A, Item 3	$	Schedule A, Item 8	$
Schedule A, Item 3		Schedule A, Item 9	
Schedule A, Item 3		Schedule A, Item 9	
Total (enter as Item 12 below)	$	Total (enter as Item 13 below)	

12. Total net income from sources without United States (total of Column A) .....
13. Total taxes paid or accrued to foreign countries or possessions of United States as separately limited (total of Column B) ..... $
14. Normal-tax net income from all sources (same as Item 1, Schedule A) ..... $
15. Ratio of net income from sources without United States to normal-tax net income from all sources (Item 12 divided by Item 14) .....
16. Total United States income tax on Item 14 (same as Item 11, Schedule A) ..... $
17. Amount of tax which may be claimed as a credit on corporation income tax return (Item 15 multiplied by Item 13, or Item 13 whichever amount is the smaller) ..... $

(SEE FOOTNOTES ON PAGE 2)

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Respondent's Exhibit C

SCHEDULE B - CREDIT CLAIMED AGAINST EXCESS PROFITS TAX Page 2

Claim for credit is made by the domestic corporation named above, based on excess profits net income ..... (Return filed or prepared) for the taxable year beginning ..... , 19 , and ending ..... , 19 , for taxes ..... (Paid or accrued) as follows

I. Excess profits net income from all sources (computed without deduction for any income, war-profits, and excess-profits taxes paid or accrued to foreign countries or possessions of the United States)	$	None
II. Total United States excess profits tax before credit for foreign taxes		None

Taxes Paid or Accrued During the Taxable Year to a Foreign Country or a Possession of the United States

Name of foreign country or possession imposing tax .....

1. Excess profits net income from sources in this foreign country or possession (computed without deduction for any income and profits taxes imposed by any foreign country or possession of the United States)	$	
2. Total of taxes paid or accrued (computed as provided in section 729)	$	
3. Amount of tax claimed as credit (Item 9, page 1, diminished under section 131 (b) (2), where applicable)	$	
4. Amount of tax to be considered for credit subject to limitations of section 729 (d) (Item 2 less Item 3)	$	
5. Ratio of excess profits net income from sources in this foreign country or possession to excess profits net income from all sources (Item 1 divided by Item I)		
6. Limitation on amount of tax credit under section 729 (d) (1) (Item II multiplied by Item 5)	$	
7. Amount allowable as credit under section 729 (d) (1) (Item 4 or Item 6, whichever is smaller)	$	

SUMMARY OF INCOME RECEIVED AND TAXES PAID, AS SHOWN IN SCHEDULE B

Name of country or possession	Column A Income or loss	Name of country or possession	Column B Taxes
Schedule B, Item 1	$	Schedule B, Item 7	
Schedule B, Item 1		Schedule B, Item 7	
Schedule B, Item 1		Schedule B, Item 7	
Total (enter as Item 8 below)	$	Total (enter as Item 9 below)	

8. Total excess profits net income from sources without United States (total of Column A) $
9. Total taxes paid or accrued to foreign countries or possessions of United States as separately limited (total of Column B) $
10. Excess profits net income from all sources (same as Item 1, Schedule B) $
11. Ratio of excess profits net income from sources without United States to excess profits net income from all sources (Item 8 divided by Item 10)
12. Total United States excess profits tax on Item 10 (same as Item II, Schedule B) $
13. Amount of tax which may be claimed as a credit against United States excess profits tax (Item 12 multiplied by Item 11, or Item 9 whichever amount is the smaller) $

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Respondent's Exhibit C

Page 3

SCHEDULE C.—Taxes Paid or Accrued to a Foreign Country or a Possession of the United States by a Controlled Foreign Corporation or a Controlled Domestic Corporation Entitled to the Benefits of Section 251 or 262 I. R. C.

Foreign corporation or corporation entitled to benefits of Sec. 251 or 262:

Name: Reo Motors, Ltd. Incorporated under the laws of: England

Address: Great West Road (Street and number) Brentford (City or town) England (Country)

		Preferred	Common	Total
Capital stock	Number of shares outstanding	-	30,000	30,000
	Number of shares owned by domestic corporation	-	30,000	30,000
	Which stock has full voting rights?	-		

Date taxable year began ..... 19.... and ended ..... 19....

Name of foreign country or possession of United States imposing tax: England Character of tax (Income, war-profits, or excess-profits)

Statutes imposing tax ..... (To be stated fully and clearly as to be easily identified)

1. Amount received during the taxable year as dividends from such controlled foreign corporation ' £11,000 (In foreign money)
   which (converted at an exchange rate of $4.02 *) equals in dollars $44,220.00
   Date and amount of each dividend payment: Jan. 21, 1942, £3,000; June 26, 1942, £8,000
2. Normal-tax net income of domestic corporation (same as Item I, page 1) $290,777.94
3. Total tax due United States on corporation income tax return (same as Item II, page 1) $116,311.18

Taxable periods of controlled foreign corporation from income of which dividends were paid *

	Year 1939	Year 1940	Year 1941
4. Dividends segregated according to years when profits from which they were paid were accumulated *	$16,080.00	$12,060.00	$16,080.00
5. Total profits of controlled foreign corporation before tax was deducted therefrom (c, d, and e)	$40,895.46	$56,911.14	$73,280.58
6. Accumulated profits (total profits less tax thereon) out of which dividends were paid	£5,581 ,	£7,243 ,	£8,735 ,
Which, converted at an exchange rate of *	$ 4.02	$ 4.02	$ 4.02
equals in dollars	$22,435.62	$29,116.86	$35,114.70
7. Amount of taxes paid or deemed to have been paid * under section 131 (f) (based upon attached tax receipts *) or taxes accrued, in foreign money upon Item 6	£4,592 ,	£6,914 ,	£9,494 ,
which, converted at an exchange rate of *	$ 4.02	$ 4.02	$ 4.02
equals in dollars	$18,459.84	$27,794.28	$38,165.88
8. Ratio of accumulated profits to total profits (Item 6 divided by Item 5)	54.86%	51.16%	47.92%
9. Tax paid on or with respect to accumulated profits (Item 7 multiplied by Item 8)	$10,127.07	$14,219.55	$18,289.09
10. Ratio of amount of dividends received to accumulated profits (Item 4 divided by Item 6)	71.67%	41.42%	45.79%
11. Amount of tax payments deemed to have been paid on profits distributed as dividends (Item 9 multiplied by Item 10)	$ 7,258.07	$ 5,889.74	$ 8,374.57
12. Ratio of amount of dividends received from controlled foreign corporation ' to normal-tax net income including such dividends (Item 4 expressed in dollars divided by Item 2)	5.53%	4.15%	5.53%
13. Limitation on amount of tax payments made by controlled foreign corporation ' which are deemed to have been paid by the domestic corporation (Item 3 multiplied by Item 12)	$ 6,432.01	$ 4,826.91	$ 6,432.01
14. Amounts of tax payments made by controlled foreign corporation ' which are deemed to have been paid by the domestic corporation (Item 11 or Item 13, whichever is smaller)	$ 6,432.01	$ 4,826.91	$ 6,432.01

15. Total of tax payments deemed to have been paid on profits distributed as dividends (total of Item 14) $17,690.93

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this statement is made, being severally duly sworn, each for himself deposes and says that this statement has been examined by him and is to the best of his knowledge and belief a true and complete statement of facts relating to the credit for tax as provided in section 131 of the Internal Revenue Code.

Subscribed and sworn to before me this

..... day of ....., 194....

(Signature of officer administering oath) (President or other principal officer) (Official title)

(Official capacity) (Treasurer, assistant treasurer, or chief accounting officer) (Official title)

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Respondent's Exhibit C

EXTRACTS FROM SECTIONS 131 AND 729 OF THE INTERNAL REVENUE CODE

TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES

SEC. 131. (a) ALLOWANCE OF CREDIT.—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102 or section 480, shall be credited with:

(1) CITIZEN AND DOMESTIC CORPORATION.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States.

* * * * * *

Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter.

(b) LIMIT ON CREDIT.—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income, in the case of a taxpayer other than a corporation, or to the sum of the normal-tax net income and the amount of the credit for adjusted excess profits net income provided in section 26 (c), in the case of a corporation, for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income, in the case of a taxpayer other than a corporation, or to the sum of the normal-tax net income and the amount of the credit for adjusted excess profits net income provided in section 26 (c), in the case of a corporation, for the same taxable year.

(c) ADJUSTMENTS ON PAYMENT OF ACCRUED TAXES.—If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(d) YEAR IN WHICH CREDIT TAKEN.—The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(e) PROOF OF CREDITS.—The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

(f) TAXES OF FOREIGN SUBSIDIARY.—

(1) FOREIGN SUBSIDIARY OF DOMESTIC CORPORATION.—For the purposes of this section, a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid by such domestic corporation under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the normal-tax net income of the domestic corporation in which such dividends are included. The term "accumulated profits" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid, treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word "year" as used in this subsection shall be construed to mean such accounting period.

(2) FOREIGN SUBSIDIARY OF FOREIGN CORPORATION.—If such foreign corporation owns all the voting stock (except qualifying shares) of another foreign corporation from which it receives dividends in any taxable year it shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such other foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of the corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits.

(g) CORPORATIONS TREATED AS FOREIGN.—For the purposes of this section the following corporations shall be treated as foreign corporations:

(1) A corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its gross income from sources within a possession of the United States;

(2) A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, s. 4), and entitled to the credit provided for in section 262.

(h) CREDIT FOR TAXES IN LIEU OF INCOME, ETC. TAXES.—For the purposes of this section and section 238 (c) (1), the term "income, war-profits, and excess-profits taxes" shall include a tax paid in lieu of a tax upon income, war-profits, or excess-profits otherwise generally imposed by any foreign country or by any possession of the United States.

SEC. 729. (a) FOREIGN TAXES PAID.—In the application of section 131 for the purposes of this subchapter the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed with respect to such tax against the tax imposed by Chapter 1.

(d) LIMITATIONS ON AMOUNT OF FOREIGN TAX CREDIT.—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within such country bears to his entire excess profits net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to his entire excess profits net income for the same taxable year.

INSTRUCTIONS

WHEN CREDIT FOR TAXES MAY BE TAKEN.—The credit for taxes provided by Section 131 (a) may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid, dependent upon whether the accounts of the taxpayer are kept and his returns filed upon the accrual basis or upon the cash receipts and disbursements basis. Where a taxpayer keeps its books of account on the accrual basis, a credit for taxes paid to a foreign country must also be taken on that basis and the time of payment of the taxes has in such case nothing to do with the time of credit. A taxpayer whose books of account are kept on the cash receipts and disbursements basis has the privilege of taking the credit for foreign taxes on an accrual basis, but if it elects to do so, the credit for foreign taxes with respect to all subsequent years must be taken upon the same basis. The basis (accrual or paid) adopted for credit under section 131 shall be the same under section 729.

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Respondent's Exhibit C

REO MOTORS LIMITED (1)

INCOME TAX COMPUTATION 1940/41 UNDER CASE I SCHEDULE D

PROFIT AS PER ACCOUNTS FOR THE YEAR ENDED 31st December 1939		5,573
Add: Income Tax	4,600	
Depreciation - Buildings	620	
Capital Expenditure	256	
Bad Debts	97	
Cost of Air Raid Shelter	160	5,733
		11,306
Less: Schedule A Premises Great West Road	960	
Bank Deposit Interest (Case III)	163	1,123
		10,183
Less: National Defence Contribution		533
Profits as adjusted		9,650
Less: Wear and Tear allowance		263
		£9,387

REO MOTORS LIMITED (1A)

COMPUTATION OF NATIONAL DEFENCE CONTRIBUTION FOR THE YEAR ENDED 31ST DECEMBER 1939

PROFIT AS ADJUSTED FOR INCOME TAX PURPOSES BEFORE DEDUCTION OF NATIONAL DEFENCE CONTRIBUTION	10,183
Add: Schedule A	960
	11,143
Less: Wear and Tear 1939/40	252
	10,891
Less: Abatement 1/5th of (£12,000 - £10,891)	222
	£10,669
5% thereon	£533. 9. 0

PARTICULARS OF ASSESSMENT

Year 1940-41 ending 5 April, 1941. (2)

Tax payable on or before 1 January, 1941.

AMOUNT OF ASSESSMENT:—

	£	s.	d.	£	s.	d.
From Profits from Trade, etc., of Commercial Vehicles	9650					
	10000			263		
From Manufacturers Credit Account						
Less Deductions for						
Machinery & Plant Wear and Tear and Additional Allowances	263					
	9737			263		
	10000			850		
	3989	9	2	69	5	6
	4250			850		

H.M. INSPECTOR OF TAXES (E. & G.)
TAX CHARGEABLE THEREON
88, HANGER LANE
EALING, W.5

Explanation for payment will be made in due course by the Collector of Taxes,

London 7th Collection, 11/12, High Street, EALING, W.5

Payment may however be made in whole in advance on production of this notice. Discount will be allowed if the tax is paid before 1 January, 1941 provided that a request is made for it at the time of payment or in writing, within one month thereafter. The discount allowable is two pounds ten shillings per cent per annum, calculated for the number of days by which the payment precedes 1 January, 1941.

Special attention is drawn to Notes I, III, and IV on the sheet enclosed herewith.

Information and advice may be obtained from the Inspector of Taxes.

The Parish and Assessment Numbers shown overleaf should be quoted in all communications.

LONDON 7th Collection. No. 2P 090318

INCOME TAX & LAND TAX. (3)

Year ending 5 April, 1944 (in respect of Income Tax.
ending 31st March, 19 (in respect of Land Tax.

Inspector's District

Name of Person Assessed, or Occupier (Schedule A)

Description of Property (Schedules A & B)

	INCOME TAX						Land Tax
Parish and Assessment Numbers		Amount of which tax is to be deducted at the standard rate	Amount on which tax is to be charged at the reduced rate	Rate of Tax in the £	£	s.	d.
	Schedule A						
	Less any relief due and allowed						
	Schedule B						
	Schedule C				1405	15	—
	Schedule D						
	Public Trustee Acts, Schedule						
	Schedule E						
	Land Tax						

PAID BY — RECEIVED the sum of £1405 15 —

Collector.

Note.—Income Tax, Schedule A [illegible]

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Respondent's Exhibit C

Respondent's Exhibit C

INLAND REVENUE
BUSH HOUSE (SOUTH WEST WING)
STRAND
LONDON, W.C.2

No. 35271

(4)

NATIONAL DEFENCE CONTRIBUTION.

The Accountant and Comptroller General begs to acknowledge the receipt of the undermentioned remittance :—

Date	Assessment number	Accounting period ended	Name	Amount £ s. d.	Account
[illegible] 1940	259-101	31.12.39	RED MOTORS LTD.	533. 9. 0	40/41

for Accountant and Comptroller General.

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Respondent's Exhibit C

[redacted] MOTORS LTD

INCOME TAX COMPUTATION
1941/42

Profit as per account for year ended 31st December 1940		7,357
Add: Income Tax	6,800	
Coal Bunkers	25	
Subscriptions	105	
Legal Charges	30	
Bad Debts	16	6,976
		14,333
Less: Deposit Interest (Case III Schedule A	290 960	1,250
		13,083
Less: N.D.C.		689
		12,394
Less: Wear and Tear		235
		£12,159
Case III Deposit Interest		£290

COMPUTATION OF NATIONAL DEFENCE CONTRIBUTION FOR THE YEAR ENDED 31st DECEMBER 1940

Profit as adjusted for Income Tax purposes before deduction of N.D.C.		13,083
Add: Schedule		160
		14,043
Less: Wear and Tear 1940/41		291
		£13,780
5% thereon		£689.[illegible]C

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Respondent's Exhibit C

PARTICULARS OF ASSESSMENT. (1)

Year 1943—as ending 5 April, 1943

				£	s.	£	s.
ADDITIONAL ASSESSMENT IN RESPECT OF—							
Profits from Trade, etc., of	Statick			19000	-	2394	-
Other Profits, viz. —				200	-	90	-
Less Deductions for —	Machinery and Plant—Wear and Tear and Additional Depreciation allowances		Loans				
	£	s.	£	s.			
	235	-				235	-
DEDUCT FOR —	Allowance for Earned Income etc. (See Note 11 on enclosed sheet)	Personal Allowance	Housekeeper	Children	Dependent Relatives		
	£	£	£	£	£		
NET AMOUNT CHARGEABLE AFTER ABOVE DEDUCTIONS						2249	-
Amount on which tax is chargeable at 6/6 in the £							
Balance chargeable at the standard rate of 10/- in the £						2249	-
						£	s. d.
TAX CHARGEABLE						1124	10 -
DEDUCT FROM THE ABOVE TAX :—							
(i) Allowance for Life Assurance—	£		at 3/6 in the £				
	£		at 1/ in the £				
(ii) Deduction of 3/6 in the £ where the £166 of income in respect of which tax is chargeable at 6/6 or the £ includes taxed dividends, interest, etc. —	£		at 3/6 in the £				
1124 10 0 236 16 1 887 13 11	9x £236 16 1 9= £887 13 7						
NET TAX PAYABLE						1124	10 -

[The Collector will apply in due course for the net tax payable]

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Respondent's Exhibit C

INCOME TAX & LAND TAX

8V 94530

(7)

5/4/42	12/1845 E3	D	Rec Motors Ltd	5 0 0 0 -	Taxn

RECEIVED the above payment.

INCOME TAX & L D TAX

8V 95778

(8)

5/4/42	12/7162 E3	D	[illegible]	113 10 -	Bal

RECEIVED the above payment.

INCOME TAX & LAND TAX

(9)

8V 1952

12/1825 E3	D	Rec Motors Ltd	100 - / -	

RECEIVED the above payment.

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Respondent's Exhibit C

Inland Revenue No. 49507

QUEENS HOTEL
LLANDUDNO

NATIONAL DEFENCE CONTRIBUTION. (10)

The Accountant and Comptroller General begs to acknowledge the receipt of the undermentioned remittance:—

Date	Assessment number	Accounting period ended	Name	Amount £ s d	Account
8 4	853-146	31-12-40	REO MOTORS LTD.	689. 0. 0	41-42

for Accountant and Comptroller General

Inland Revenue No. 3920

NATIONAL DEFENCE CONTRIBUTION. (16)

The Accountant and Comptroller General acknowledges the receipt of the undermentioned remittance:—

Date	Assessment number	Accounting period ended	Name	Amount £ s d	Account
4 43	853-173	31.12.41	REO MOTORS LTD.	14.18. 0	42-43

for Accountant and Comptroller General

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Respondent's Exhibit C

(11)

KRO MOTORS (BRITAIN) LTD

INCOME TAX COMPUTATION 1942/43

Profit as per accounts for the year ended 31st December 1941			8,229
Add:	Provision for taxation	10,000	
	Subscriptions	20	
	War Damage Contribution	480	
	Legal Charges	11	
	Additions to heating appliances	29	
	Cost of Car (charged to travelling expenses)	145	
	War Risks Insurance on Plant	110	
	Bad Debts recovered	133	
	Damage to machinery by enemy action	66	11,014
			19,243
Less:	Schedule A	960	
	Deposit Interest - Case III	201	
	Bad Debts Reserve	9	1,170
			18,073
Less:	National Defence Contribution		940
			17,133
Less:	Wear and Tear Allowance		226
			£16,907
	Tax thereon @ 10s.		£8,453.10.0
Case III - Deposit Interest			£201
	Tax thereon @ 10s.		£100.10. 0

NATIONAL DEFENCE CONTRIBUTION FOR YEAR ENDED 31st DECEMBER 1940

Adjusted Profit for income tax purposes before deduction of national defence contribution		18,073
Add:	Schedule A	960
		19,033
Less:	Wear and Tear 1941/42	235
		£18,798
	5% thereon	£939.18. 0

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Respondent's Exhibit C

INCOME TAX

12.

for the year commencing 6 April, 1943
PAYABLE ON OR BEFORE 1 JANUARY, 1943

The Secretary.
Gas Meters Ltd.
Gt. West Road
Brentford

Application is hereby made for payment of the Income Tax for the year 1942-43, due on 1 January, 1943, and payable on or before that date.

Collector of Taxes (London 7th (Collection),
1st Floo[illegible] Street,
Ealing, W.5.

Date.

London 7th Collection.

Description of Tax	Yields and Assessment Numbers	Tax Payable £	s.	d.
SCHEDULE D. Discontinuance. (On Profits of Trades, Professions, etc. Interest, etc.)	A 1845	8468	10	—
SCHEDULE E. First Instalment. (On Income from Office, Employment, Pension, etc.)	1	110	10	—
	TOTAL	9578	-	-

DIRECTIONS AS TO PAYMENT

1. This notice should accompany a remittance as to produced at the time of payment. An official receipt should be obtained on the payment of payment.
2. The amount should be remitted to the Collector of the above address, (a) by crossed cheque payable to the Commissioners of Inland Revenue, or (b) by postal order in favour of the Commissioners of Inland Revenue, which may be obtained free of commission on production of the notice at any money order office.
3. All cheques and money orders should be crossed "Inland Revenue Account".
4. Payment may be made personally at the Collector's office between 10 a.m. and 4 p.m. Saturday, 10 a.m. and 12 noon).

ANY CORRESPONDENCE RELATING TO THE ASSESSMENT SHOULD BE ADDRESSED TO THE INSPECTOR OF TAXES.

[illegible] P 31

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Respondent's Exhibit C

INCOME TAX & LAND TAX

(13.)

5443	12/E3/1845	D/M	Reo Motors Ltd	8354	48644

RECEIVED the above payment.

Collector

10 DEC 41

Date Stamp

£8

The Accountant and Comptroller General of Inland Revenue acknowledges the receipt of your letter enclosing a remittance. A further communication will be sent to you in due course. (14)

Date	A. & C.G. No.	Name	Amount £ s. d.
SEP 25 42	27716	REO MOTORS LTD.	800. 0. 0

INLAND REVENUE, Queen's House, LANCASTER.

A.G. 663.

This is not a formal receipt

06

NATIONAL DEFENCE CONTRIBUTION.

INLAND REVENUE, Bush House (South West Wing), London, W.C.2. No. 24433

The Accountant and Comptroller General begs to acknowledge the receipt of the undermentioned remittance (15)

Date	Assessment number	Accounting period ended	Name	Amount £ s. d.	Amount
OCT 24 42	253/868	31-12-41	REO MOTORS LTD.	125. 0. 0	42-3

for Accountant and Comptroller General.

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A.G. 546.

10. Bonds, notes, and mortgages payable:								
(a) With original maturity of less than 1 year	$				$			
(b) With original maturity of 1 year or more								
11. Accrued expenses (Itemize)	$				$			
12. Other liabilities (Itemize)	$				$			
13. Surplus reserves (Itemize in separate schedule)								
14. Capital stock:								
(a) Preferred stock	$				$			
(b) Common stock								
15. Paid-in or capital surplus								
16. Earned surplus and undivided profits								
17. TOTAL LIABILITIES			$				$	

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:			12. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	$
(a) Cash	$		14. Adjusted net income (Item 27, page 1)	
(b) Stock of the corporation			15. Nontaxable and partially exempt income:	
(c) Other property			(a) Interest on:	
2. Contributions (excess over 5 percent limitation)			(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income and excess-profits taxes			(2) Obligations of the United States:	
4. Income taxes claimed as a credit in whole or in part in Item 23, page 1			(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941	
5. Federal taxes paid on tax-free covenant bonds			(ii) United States savings bonds and Treasury bonds owned in the principal amount of $5,000 or less, issued prior to March 1, 1941	
6. Excess of capital losses over capital gains			(iii) United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued prior to March 1, 1941	
7. Additions to surplus reserves (list separately):	Schedule M attached		(3) Obligations of instrumentalities of the United States:	
(a)			(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941	
(b)			(ii) Obligations issued by other instrumentalities of the United States prior to March 1, 1941	
8. Other unallowable deductions:			(b) Other nontaxable income (Itemize):	
(a)			(1)	
(b)			(2)	
9. Adjustments not recorded on books (Itemize):			16. Charges against surplus reserves (Itemize):	
(a)			17. Adjustments not recorded on books (Itemize):	
(b)			18. Sundry credits to earned surplus (Itemize):	
10. Sundry debits to earned surplus (Itemize):				
(a)			19. Total of lines 13 to 18	$
(b)				
11. Earned surplus and undivided profits at close of the taxable year (Schedule L)				
12. Total of lines 1 to 11	$			

EXCESS PROFITS TAX. (See Instructions for Form 1121)

(a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes

(b) If a personal service corporation (other than a member of an affiliated group of corporations filing a consolidated return) signifies below its desire not to be subject to the excess profits tax, it shall be exempt from such tax and the provisions of Supplement S, Chapter 1, shall apply to the shareholders in such corporation who were such shareholders on the last day of the taxable year of the corporation. (Attach Form 1121PS)

(c) If corporation claims exemption under section 727 of the Internal Revenue Code, state basis of claim

(d) If an excess profits tax return is not being filed for the reason that it is claimed that the excess profits net income computed under the invested capital method is not greater than $5,000, the following Schedule N should be filed in. The completion of Schedule N does not constitute the filing of an excess profits tax return.

Schedule N.—EXCESS PROFITS NET INCOME COMPUTATION

1. Normal-tax net income (computed without credit for income subject to excess profits tax) (Item 30 plus Item 33, page 1)	$		6. Dividends received (with adjustment (Item 31, page 1, excluding the sum of (a) dividends received (unless exempt) from foreign personal holding companies, and (b) dividends received on stock held primarily for sale to customers by a dealer in securities (Item 30, page 1))	$
2. Net short-term capital gain (do not enter net short-term capital loss)			7. Net gain from sale or exchange of capital assets (Item 12 (c), page 1)	
3. 80 percent of interest on borrowed capital			8. Income from retirement or discharge of bonds, etc.	
4. Adjustment to net operating loss deduction under section 711 (a) (2) (L)			9. Refunds and interest on Agricultural Adjustment Act taxes	
5. Total of lines 1 to 4	$		10. Recoveries of bad debts	
			11. Total of lines 6 to 10	$
12. Excess profits net income (for purpose of determining necessity for filing return) (line 5 minus line 11)				$

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Respondent's Exhibit D

AMENDED RETURN

Original - 1504346-C (1942)

Page 1

Form 1120
Treasury Department
Internal Revenue Service

UNITED STATES
CORPORATION INCOME AND DECLARED VALUE EXCESS-PROFITS TAX RETURN 1942

For Calendar Year 1942

or fiscal year beginning ....., 1942, and ending ....., 1943

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.

(Name)

1331 South Washington Avenue

(Street and number)

Lansing (Post office) Ingham (County) Michigan (State)

Kind of business: Manufacture of motor vehicles

Business group serial number (from instruction M): 105

File Code: 1

Serial No.:

District: 1 - Lansing

(Collector's stamp)

Cash Check M. O.

First Payment

$

NORMAL-TAX NET INCOME COMPUTATION

From mod. Instruction No.				
	GROSS INCOME			
1.	Gross sales (where inventories are an income-determining factor) ..... $ ..... ; Less: Returns and allowances ..... $		$ 24523,572	05
2.	Less: Cost of goods sold. (From Schedule A)		18624,122	05
3.	Gross profit from sales		$ 5235,450	00
4.	Gross receipts (where inventories are not an income-determining factor) $			
5.	Less: Cost of operations. (From Schedule B)			
6.	Gross profit where inventories are not an income-determining factor		-	
7.	Interest on loans, notes, mortgages, bonds, bank deposits, etc.		25,445	52
	Less: Amortizable Bond Premium			
8.	Interest on corporation bonds, etc.: (a) $ (b) $		-	
9.	(a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued prior to March 1, 1941. (From Schedule M, Line 10 (a) (2) (iii))		-	
	(b) Interest on Treasury notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)		-	
10.	Rents		36,482	72
11.	Royalties		-	
12.	(a) Net gain from sale or exchange of capital assets. (From Schedule C)		-	
	(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)		(211,368	44)
13.	Dividends. (From Schedule E)		44,260	00
14.	Other income. (State nature) (Schedule attached to original return)		24,233	58
15.	Total income in items 3, and 6 to 14, inclusive			$ 5754,504 39
	DEDUCTIONS			
16.	Compensation of officers. (From Schedule F)		$ 145,057	75
17.	Salaries and wages (not deducted elsewhere)		679,463	30
18.	Rent		54,384	52
19.	Repairs		[illegible]	[illegible]
20.	Bad debts. (From Schedule G)		557,510	55
21.	Interest		46,161	55
22.	Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 34)		524,266	51
23.	Contributions or gifts paid. (From Schedule I)		17,506	00
24.	Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)		-	
25.	Depreciation. (From Schedule J)		421,755	83
26.	Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)		-	
27.	Net operating loss deduction. (Submit statement) (Statement attached to original return)		2079,154	16
28.	Amortization of emergency facilities. (Submit schedule)		-	
29.	Other deductions authorized by law. (From Schedule K)		443,441	93
30.	Total deductions in items 16 to 29, inclusive			5604,134 93
31.	Net income for declared value excess-profits tax computation (item 15 minus item 30)			$ 150,369 45

4. Interest on loans, notes, mortgages, bonds, bank deposits, etc.		25,446	52		
8. Interest on corporation bonds, etc. (c)	$	$ -			
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 in value prior to March 1, 1941. (From Schedule M, line 15 (a) (2) (iii))		-			
(b) Interest on Treasury notes issued on or after December 1, 1935, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)		-			
10. Rents		36,482	72		
11. Royalties		-			
12. (a) Net gain from sale or exchange of capital assets. (From Schedule C)		-			
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)		(211,368	44)		
13. Dividends. (From Schedule E)		44,260	00		
14. Other income. (State nature) (Schedule attached to original return)		24,233	58		
15. Total income in items 3, and 6 to 14, inclusive				$ 5754,504	39
DEDUCTIONS					
16. Compensation of officers. (From Schedule F)		$ 145,067	75		
17. Salaries and wages (not deducted elsewhere)		679,483	30		
18. Rent		54,384	5-		
19. Repairs		[illegible]			
20. Bad debts. (From Schedule G)		567,510	55		
21. Interest		46,161	55		
22. Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 34)		524,266	51		
23. Contributions or gifts paid. (From Schedule I)		17,506	00		
24. Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)		-			
25. Depreciation. (From Schedule J)		421,755	83		
26. Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)		-			
27. Net operating loss deduction. (Submit statement) (Statement attached to original return)		2079,154	16		
28. Amortization of emergency facilities. (Submit schedule)		-			
29. Other deductions authorized by law. (From Schedule K)		443,441	93		
30. Total deductions in items 16 to 29, inclusive				5604,134	97
31. Net income for declared value excess-profits tax computation (item 15 minus item 30)				$ 130,369	45
32. Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (3) (ii)) $ ... Less amortizable bond premiums, $ ...				-	
33. Total of lines 31 and 32				$ 130,369	45
34. Less: Declared value excess-profits tax				-	
35. Net income				$ 130,369	45
36. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 9 (a) and 32)				-	
37. Adjusted net income				$ 130,369	45
38. Less: Income subject to excess profits tax		$ -			
39. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, above)		34	00		
40. Normal-tax net income				$ 130,335	45
TOTAL INCOME AND DECLARED VALUE EXCESS-PROFITS TAXES					
41. Total income tax (line 28 or 50, page 2, whichever is applicable)		$ 52,134	18		
42. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation		17,687	55		
43. Balance of income tax ORIGINAL — 98,621 35		DECR		$ 34,446	62
44. Total declared value excess-profits tax (line 8, page 2) AMENDED — 34,446 62		-		-	
45. Total income and declared value excess-profits taxes due DECREASE — 64173.63 / No change				$ 34,446	62

AFFIDAVIT. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 20 day of May, 194?

NOTARIAL SEAL — (Signature of officer administering oath) — (Title) — CYRUS J. RATH, PUBLIC, INGHAM COUNTY, MICH. MY COMMISSION EXPIRES DEC. 29, 194?

CORPORATE SEAL — (President or other principal officer) (State title) — (Treasurer, Assistant Treasurer, or Chief Accounting Officer) (State title)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this ... day of ..., 194...

NOTARIAL SEAL — Affidavit attached — (Signature of officer administering oath) — (Title)

(Signature of person preparing the return) — (Signature of person preparing the return) — (Name of firm or employer, if any)

16-12500-1

Respondent's Exhibit D.

DECLARED VALUE EXCESS-PROFITS TAX COMPUTATION. (See Computation Instructions)

Line No.		Column 1	Col. 2 Rate	Column 3 Amount of Tax
1.	Net income for declared value excess-profits tax computation (item 31, page 1)	$ 130,369 45		
2.	Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1942 (or for year ended June 30, 1943, if your income tax fiscal year began in 1942 and ended on or after July 31, 1942) $30,000,000			
3.	10 percent of line 2	$3,000,000 00		
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, page 1) 34 00	3,000,034 00		
5.	Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4)	$ None		
6.	Amount taxable at 6.6 percent (5 percent of line 2, but not more than line 5); and tax		6.6%	$
7.	Balance taxable at 13.2 percent (line 5 minus line 6, column 1); and tax	$	13.2%	
8.	Total declared value excess-profits tax (total of line 6, column 3, and line 7, column 3)			$

INCOME TAX COMPUTATION. (See Computation Instructions)

NORMAL TAX COMPUTATION

DOMESTIC CORPORATIONS WITH NORMAL-TAX NET INCOMES NOT OVER $25,000

9.	Normal-tax net income (item 40, page 1)	$		
10.	Portion of line 9 (not in excess of $5,000); and tax at 15 percent	$	15%	$
11.	Portion of line 9 (in excess of $5,000 and not in excess of $20,000); and tax at 17 percent		17%	
12.	Portion of line 9 (in excess of $20,000 and not in excess of $25,000); and tax at 19 percent		19%	
13.	Portion of line 9 (in excess of $25,000); and tax at 31 percent		31%	
14.	Total normal tax (total tax in column 3 of lines 10, 11, 12, and 13)			$

DOMESTIC CORPORATIONS WITH NORMAL-TAX NET INCOMES OF OVER $25,000 AND FOREIGN CORPORATIONS ENGAGED IN BUSINESS WITHIN THE UNITED STATES IRRESPECTIVE OF AMOUNT OF NORMAL-TAX NET INCOME

15.	Normal-tax net income (item 40, page 1)	$ 130,335 45		
16.	Normal tax (24 percent of line 15)		24%	$ 31,280 51

SURTAX COMPUTATION

17.	Net income (item 35, page 1)	$ 130,369 45		
18.	Less: Income subject to excess profits tax $ -			
19.	Dividends received credit (85 percent of column 2, Schedule E (excluding certain dividends received on preferred stock of a public utility), but not in excess of 85 percent of line 17 minus 18) 34 00			
20.	Dividends paid on certain preferred stock if taxpayer is a public utility -	34 00		
21.	Surtax net income	$ 130,335 45		

CORPORATIONS WITH SURTAX NET INCOMES NOT OVER $25,000

22.	Portion of line 21 (not in excess of $25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return)	$	10%	$
23.	Portion of line 21 (in excess of $25,000 and not in excess of $50,000); and tax at 22 percent (or 24 percent in the case of a consolidated return)		22%	
24.	Total surtax in column 3 of lines 22 and 23			$

CORPORATIONS WITH SURTAX NET INCOMES OF OVER $50,000

25.	Surtax net income (line 21 above)	$ 130,335 45		
26.	Surtax (16 percent of line 25) (or in the case of a consolidated return, 18 percent of the consolidated surtax net income)		16%	$ 20,853 67
27.	Total normal and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable)			$ 52,134 18
28.	Total tax (line 27 or line 33, Schedule C)			$ 52,134 18

TAX COMPUTATION FOR REGULATED INVESTMENT COMPANIES

29.	Adjusted net income (item 37, page 1, but computed without regard to section 47 (c))	$		
30.	Add: Net operating loss deduction (item 27, page 1)			
31.	Total of lines 29 and 30	$		
32.	Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)			
33.	Adjusted net income (after applying section 362 (b) (1))	$		
34.	Less: Basic surtax credit (excluding capital gain dividends) computed without regard to paragraphs (2) and (3) of section 27 (b). (Submit schedule)			
35.	Supplement Q net income	$		
36.	Normal tax (24 percent of line 35)		24%	$
37.	Net income (item 35, page 1, but computed without regard to section 47 (c))	$		
38.	Add: Net operating loss deduction (item 27, page 1)			
39.	Total of lines 37 and 38	$		
40.	Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)			
41.	Net income (after applying section 362 (b) (2))	$		

20.	Dividends paid on certain preferred stock if taxpayer is a public utility	-	34 60	
21.	Surtax net income		$ 130,335 45	

CORPORATIONS WITH SURTAX NET INCOMES NOT OVER $50,000

22.	Portion of line 21 (not in excess of $25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return)	$	10%	$
23.	Portion of line 21 (in excess of $25,000 and not in excess of $50,000); and tax at 22 percent (or 24 percent in the case of a consolidated return)		22%	
24.	Total surtax in column 3 of lines 22 and 23			$

CORPORATIONS WITH SURTAX NET INCOMES OF OVER $50,000

25.	Surtax net income (line 21 above)	$ 130,335 45		
26.	Surtax (16 percent of line 25) (or in the case of a consolidated return, 18 percent of the consolidated surtax net income)		16%	$ 20,853 67
27.	Total normal and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable)			$ 52,134 18
28.	Total tax (line 27 or line 33, Schedule C)			$ 52,134 18

TAX COMPUTATION FOR REGULATED INVESTMENT COMPANIES

29.	Adjusted net income (item 37, page 1, but computed without regard to section 47 (c))	$		
30.	Add: Net operating loss deduction (item 27, page 1)			
31.	Total of lines 29 and 30	$		
32.	Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)			
33.	Adjusted net income (after applying section 362 (b) (1))	$		
34.	Less: Basic surtax credit (excluding capital gain dividends) computed without regard to paragraphs (2) and (3) of section 27 (b). (Submit schedule)			
35.	Supplement Q net income	$		
36.	Normal tax (24 percent of line 35)		24%	$
37.	Net income (item 35, page 1, but computed without regard to section 47 (c))	$		
38.	Add: Net operating loss deduction (item 27, page 1)			
39.	Total of lines 37 and 38	$		
40.	Less: Excess of net long-term capital gain over short-term capital loss. (From Schedule C)			
41.	Net income (after applying section 362 (b) (2))	$		
42.	Less: Dividends (other than capital gain dividends) paid including consent dividends credit. (Submit schedule)			
43.	Supplement Q surtax net income	$		
44.	Surtax (16 percent of line 43)		16%	
45.	Net long-term capital gain. (From Schedule C)	$		
46.	Less: Net short-term capital loss. (From Schedule C)	$		
47.	Capital gain dividends paid. (Submit schedule)			
48.	Excess subject to tax	$		
49.	Tax (25 percent of line 48)		25%	
50	Total tax in lines 36, 44, and 49			$

Schedule A.—COST OF GOODS SOLD. (See Instruction 2)
(Where inventories are an income-determining factor)

Inventory at beginning of year	$
Material or merchandise bought for manufacture or sale	No change in schedule as set forth in original return
Salaries and wages	
Other costs per books. (Attach itemized schedule)	
Total	$
Less: Inventory at end of year	
Cost of goods sold (enter as item 2, page 1)	$

Schedule B.—COST OF OPERATIONS
(Where inventories are not an income-determining factor)

Salaries and wages	$
Other costs (to be detailed):	
(a)	
(b)	
(c) None	
(d)	
(e)	
Total (enter as item 5, page 1)	$

Schedule C.—Separate Schedule C (Form 1120) should be secured and used in reporting sales and exchanges of capital assets and filed with and as a part of this return.

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 12)

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Contract price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvements Subsequent to Acquisition or March 1, 1913	6. Depreciation Allowed (or allowable) Since Acquisition or March 1, 1913 (Furnish details)	7. Gain or Loss (column 3 plus column 6 minus the sum of columns 4 and 5)
No change in schedule attached to original return		$	$	$	$	$ 0
Total net gain (or loss): (Enter as item 12 (b), page 1)						$

Supplemental information required for Schedule D

State with respect to each item of property reported in Schedule D: (1) how property was acquired (2) whether at time of sale or exchange (a) purchaser owned directly or indirectly more than 50 percent in value of your outstanding stock, (b) where purchaser was a corporation, more than 50 percent in value of its capital stock and 50 percent in value of your capital stock was owned directly or indirectly by or for the same individual or his family, and (c) where purchaser was a corporation, whether more than 50 percent in value of its capital stock was owned directly or indirectly by you ..... If so, state name and address of purchaser .....

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Respondent's Exhibit D

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Schedule E.—INCOME FROM DIVIDENDS

1. Name and Address of Paying Corporation	2. *Domestic Corporations Taxable Under Chapter 1, Internal Revenue Code	3. Foreign Corporations	4. Other Corporations
No change in Schedule as set forth in original return	$	$	$
Totals	$	$	$
Total of columns 2, 3, and 4. (Enter as item 13, page 1)			$

*Except dividends received from corporations organized under the China Trade Act, 1922, and corporations entitled to the benefits of section 251 of the Internal Revenue Code, which dividends should be entered in column 4.

Dividends on share accounts in Federal savings and loan associations by name of share accounts issued prior to March 31, 1942, should not be listed, but the amount should be included in items 12 and 13, page 1; dividends on share accounts issued on or after March 31, 1942, should be reported in column 4.

Schedule F.—COMPENSATION OF OFFICERS

1. Name and Address of Officer	2. Official Title	3. Time Devoted to Business	Percentage of Corporation's Stock Owned		5. Amount of Compensation
			4. Common	5. Preferred	
No change in schedules (F and F-1) attached to original return					$
Total compensation of officers. (Enter as item 14, page 1)					$

NOTE.—Schedule F-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of $75,000 was paid to any officer or employee.

Schedule G.—BAD DEBTS. (See instruction 20) (See notes 1 and 2)

1. Taxable Year	2. Net Income Reported	3. Debts on Account	4. Bad Debts of Corporation if No Reserve Is Carried on Books (See note 2)	If Corporation Carries a Reserve— 5. Gross Amount Added to Reserve	6. Amount Charged Against Reserve
1938	$	$	$	$	$
1939	No change in schedule attached to original return				
1940					
1941					
1942					

1. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐.
2. Not including securities which are capital assets and which became worthless within the taxable year. Such securities which became worthless within the year should be reported in Schedule C.

Schedule H.—TAXES. (See instruction 22)

Nature	Amount
No change in schedule as set forth in original return	$
Total. (Enter as item 22, page 1)	$

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See instruction 23)

Name and Address of Organization	Amount
No change in schedule attached to original return	$
Total. (Enter as item 23, page 1, subject to 5 percent limitation.) (See instruction 23)	$

Schedule J.—DEPRECIATION. (See instruction 25)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis (Do not include land or other nondepreciable property)	4. Amount Prev. Depreciated to the End of Year	5. Depreciation Allowed or Allowable in Prior Years	6. Depreciation Claimed This Year	7. Rate (Annual Life Used in Accordance with Bulletin F)	8. Depreciation Allowed or Allowable This Year	9. Depreciation Allowed to Close of This Year
		$	$	$	$			$
XXXX

1938	No change in schedule attached to original return					
1939						
1940						
1941						
1942						

1. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐.
2. Not including securities which are capital assets and which became worthless within the taxable year. Such securities which became worthless within the year should be reported in Schedule C.

Schedule H.—TAXES. (See Instruction 22)

Nature	Amount
No change in schedule as set forth in original return	$
Total. (Enter as item 22, page 1)	$

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 23)

Name and Address of Organization	Amount
No change in schedule attached to original return	$
Total. (Enter as item 23, page 1, subject to 5 percent limitation.) (See Instruction 23)	$

Schedule J.—DEPRECIATION. (See Instruction 26)

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis (Do not include land or other nondepreciable property)	4. Assets Fully Depreciated in Use at End of Year	5. Depreciation allowed (or adjusted) in Prior Years	6. Depreciation Claim Be Recovered	7. Rate Period Life Used in Accounting Depreciation	8. Rate Method Used Computing This Year's Depreciation	9. Depreciation Allowable This Year
		$	$	$	$			$
No change in schedule attached XXXXXXXXXXXXXXXXXX								
Total. (Enter as item 25, page 1)								$

Schedule K.—OTHER DEDUCTIONS. (See Instruction 27)

No change in schedule attached to original return

QUESTIONS

No change in answers set forth in original return.

1. Date of incorporation
2. State or country
3. State collector's office where the corporation's return for the preceding year was filed
4. The corporation's books are in care of

   Located at
5. Number of places of business
6. Did the corporation during the taxable year have any Government contracts or subcontracts? (Answer "yes" or "no") If answer is "yes," state the approximate aggregate gross dollar amount billed during the taxable year under all such contracts and/or subcontracts. (See Instruction G-(3).) $
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? (If so, an additional return on Form 1120 H must be filed.)
8. Is this a consolidated return? (If so, procure from the collector of internal revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.)
9. If this is not a consolidated return: (a) did you own at any time during the taxable year 80 percent or more of the voting stock of another corporation either domestic or foreign? ; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 80 percent or more of your voting stock? (If either answer is "yes," attach separate schedule showing: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.)
10. Is this return made on the basis of cash receipts and disbursements? If not, describe fully in separate statement.
11. Did the corporation at any time after October 3, 1942, and before the end of its taxable year have in its employ more than eight individuals? (Answer "yes" or "no") If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate after October 3, 1942? (Answer "yes" or "no") If answer to second question is "yes," attach statement explaining all such increases or decreases. If any of such increases or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in Instruction 16, attach also a copy of the authorization for each of such increases or decreases.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower If other basis is used, explain fully in separate statement, giving date inventory was last reconciled with stock.
13. Did the corporation make a return of information on Forms 1096 and 1099 for the calendar year 1942 (see Instruction G-(1))?
14. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no") (If answer is "yes," attach statement as required by Instruction K-(3).)

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Respondent's Exhibit D

Schedule L.—BALANCE SHEETS. (See Instruction L)

ASSETS	Beginning of Taxable Year: Amount	Beginning of Taxable Year: Total	End of Taxable Year: Amount	End of Taxable Year: Total
1. Cash		$		$
2. Notes and accounts receivable	$		$	
Less: Reserve for bad debts				
3. Inventories (itemize in separate schedule)				
4. Investments in governmental obligations:				
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$		$	
(b) Obligations of the United States:				
(1) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1969; and Treasury bills issued prior to March 1, 1941				
(2) United States savings bonds and Treasury bonds issued prior to March 1, 1941				
(3) Treasury notes issued on or after December 1, 1969; and all other obligations of the United States issued on or after March 1, 1941				
(c) Obligations of instrumentalities of the United States:				
(1) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941				
(2) Obligations issued by other instrumentalities of the United States prior to March 1, 1941				
(3) Obligations of all instrumentalities of the United States issued on or after March 1, 1941				
5. Other investments (itemize)				
6. Capital assets:				
(a) Depreciable assets (itemize in separate schedule)			$	
Less: Reserve for depreciation				
(b) Depletable assets	$		$	
Less: Reserve for depletion				
(c) Land				
7. Other assets (itemize)	$		$	
8. TOTAL ASSETS		$		$
LIABILITIES				
9. Accounts payable		$		$
10. Bonds, notes, and mortgages payable:				
(a) With original maturity of less than 1 year	$		$	
(b) With original maturity of 1 year or more				
11. Accrued expenses (itemize)	$		$	
12. Other liabilities (itemize)	$		$	
13. Surplus reserves (itemize in separate schedule)				
14. Capital stock:				
(a) Preferred stock	$		$	
(b) Common stock				
15. Paid-in or capital surplus				
16. Earned surplus and undivided profits				
17. TOTAL LIABILITIES		$		$

No change in schedule attached to original return

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:		12. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	$
(a) Cash	$	14. Adjusted net income (Item 37, page 1)	
(b) Stock of the corporation		15. Nontaxable and partially exempt income:	
(c) Other property		(a) Interest on:	
2. Contributions (excess over 5 percent limitation)		(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income and excess-profits taxes		(2) Obligations of the United States:	
4. Income taxes claimed as a credit in whole or in part in Item 42, page 1		(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1969; and Treasury bills issued prior to March 1, 1941	
5. Federal taxes paid on tax-free covenant bonds		(ii) United States savings bonds and Treasury bonds owned in the principal amount of $5,000 or less, issued prior to March 1, 1941	
6. Excess of capital losses over capital gains		(iii) United States savings bonds and Treasury bonds owned in excess of the principal amount of $5,000 issued	
7. Additions to surplus reserves (list separately):	Schedule M attached		
(a)			
(b)			
8. Other unallowable deductions:			

Respondent's Exhibit D

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

I, A. S. Currie, acting on behalf of Price, Waterhouse & Co., 1946 Penobscot Building, Detroit, Michigan, as adviser for Reo Motors, Inc., affirm that pursuant to instructions received from Mr. H. E. Hund, President, I prepared the attached amended Federal corporation income and declared value excess-profits tax return for the year ending December 31, 1942, which shows a normal tax net income (line 40) of $130,335.45 and a total tax payable of $34,446.62 on the basis of information furnished by the said Reo Motors, Inc. in connection with an examination of the financial statements of the company; that the information set out in the return and accompanying schedules correctly and fairly reflects the information furnished to or discovered by me during the course of the preparation of the return and that said information is true to the best of my information and belief.

A. S. Currie

Subscribed and sworn to before me
this 19th day of May, 1943.

Notary Public, Wayne County, Michigan.

My commission expires 10/11/46.

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Respondent's Exhibit D

REO MOTORS, INC.

LANSING, MICHIGAN

STATEMENT ATTACHED TO AMENDED RETURN ON FORM 1120 - 1942

This amended return is filed solely for the purpose of claiming additional depreciation in the amount of $159,815.94 due to increased production, with minor corrections in amounts of normal depreciation, resulting in an increase therein of $626.55. Otherwise, there is no change in the computation of net income.

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R E O M O T O R S, I N C.

LANSING, MICHIGAN

DEPRECIATION - YEAR 1942

Kind of property	Remaining unrecovered cost at December 31, 1941	Adjustments to physical inventory	Remaining unrecovered cost at December 31, 1941 after adjustment	Additions in 1942 at cost	Unrecovered cost of items sold or otherwise disposed of in 1942
Land improvements	$ -	$ 5,095.06	$ 5,095.06	$ -	$ -
Buildings	891,886.33	508,788.52	1,400,674.85	-	-
Building equipment	485.00	32,922.38	33,407.38	-	-
Machinery	532,268.61				
Factory equipment	551,937.02				
Experimental and drafting	16,350.97				
Power and heating	21,413.22	636.37	1,208,384.70	38,337.32	57,004.09
Electrical equipment	64,188.64				
Clubhouse equipment	6,807.04				
Unclassified plant	14,782.83				
Autos and trucks	5,427.25	-	5,427.25	8,131.97	995.35
Furniture and fixtures	13,660.45	49,270.49	62,930.94	25,180.85	59.23
Branch:					
Buildings	85,274.28	18,945.97	104,220.25	-	79,761.05
Machinery	915.11				
Operating equipment	13,090.91	-	14,006.02	2,204.31	830.58
Furniture and fixtures	4,044.74	-	4,044.74	123.92	244.76
Service cars	5,824.00	-	5,824.00	1,795.79	535.83
	$2,228,356.40	$615,658.79	$2,844,015.19	$75,774.16	$139,430.89

Respondent's Exhibit D

Schedule J

R E O M O T O R S, I N C.

LANSING, MICHIGAN

DEPRECIATION - YEAR 1942

Remaining unrecovered cost at December 31, 1941	Adjustments to physical inventory	Remaining unrecovered cost at December 31, 1941 after adjustment	Additions in 1942 at cost	Unrecovered cost of items sold or otherwise disposed of in 1942	Depreciation allowable for year 1942		Remaining unrecovered cost at December 31, 1942
					Normal	Additional amount due to increased production	
$ -	$ 5,095.06	$ 5,095.06	$ -	$ -	$ 978.44	$ -	$ 4,116.62
891,886.33	508,788.52	1,400,674.85	-	-	60,715.94	-	1,339,958.91
485.00	32,922.38	33,407.38	-	-	4,611.25	4,611.25	24,184.88
532,268.61)							
551,937.02)							
16,350.97)							
21,413.22)	636.37	1,208,384.70	38,337.32	57,004.09	172,552.09	155,204.69	861,961.15
64,188.64)							
6,807.04)							
14,782.83)							
5,427.25	-	5,427.25	8,131.97	995.35	2,112.47	-	10,451.40
13,660.45	49,270.49	62,930.94	25,180.85	59.23	10,757.87	-	77,294.69
85,274.28	18,945.97	104,220.25	-	79,761.05	2,120.25	-	22,338.95
915.11)	-	14,006.02	2,204.31	830.58	2,923.21	-	12,456.54
13,090.91)							
4,044.74	-	4,044.74	123.92	244.76	817.16	-	3,106.74
5,824.00	-	5,824.00	1,795.79	535.83	4,351.21	-	2,732.75
$2,228,356.40	$615,658.79	$2,844,015.19	$75,774.16	$139,430.89	$261,939.89	$159,815.94	$2,358,602.63
					159,815.94		
					$421,755.83		

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Respondent's Exhibit D

Schedule M

R & O MOTORS, INC.

LANSING, MICHIGAN

RECONCILIATION OF NET INCOME AND ANALYSIS OF SURPLUS AND UNDIVIDED PROFITS

Adjusted net income (Item 37, page 1 of return)		$ 130,369.45
Loss on sale of assets other than capital assets on basis of cost (Schedule D)		211,368.44
Depreciation on basis of cost (Schedule J)		421,755.83
Development expenses deferred on books		56,991.49
Adjustment of property taxes to basis of taxes assessed during 1942		23,402.80
Increase in equity in net assets of foreign subsidiary companies credited on books as follows:		
Profit and loss	$18,732.49	
Earned surplus	41,904.31	60,636.80
Net operating loss carryover (Item 27)		2,079,154.16
Charges against surplus reserves:		
Obsolescence in inventories		124,876.74
Claims against closed banks		258,161.94
Portion of rent paid during 1942 charged against reserve		16,520.83
Aluminum scrap loss		1,294.22
Compensation claims		5,600.00
Intercompany profits in inventories		42,640.46
Amount of franchise fee paid during 1942 in excess of amount charged to profit and loss account		2,020.13
		$3,434,793.29
Deduct:		
Loss on sale of capital assets per books	$ 54,901.15	
Depreciation per books	66,743.55	
Development expenses deferred on books at December 31, 1941 but claimed as deduction in the 1941 income tax return	72,355.31	
Dividend received from subsidiary company applied on books in reduction of investment	44,220.00	
Additions to reserves (Schedule M-1)-		
Contingencies	455,000.00	
Capital stock transfer fees	10,000.00	
Repairs to coaches	18,000.00	
Legal and professional fees	25,353.75	
State income and franchise taxes	19,000.00	
Excess of accrued bonuses over actual liability therefor	2,837.04	
Excess of amount of capital stock tax paid for year ended June 30, 1942 over amount provided therefor at December 31, 1941	25,500.00	
Provision for Federal taxes on income	1,213,000.00	2,003,510.80
		$1,431,282.49
Earned surplus and undivided profits as shown by balance sheet at close of preceding taxable year		326,561.51
		$1,757,844.00
Less- Dividend paid in cash during 1942		232,500.00
Earned surplus and undivided profits at close of taxable year (Schedule L)		$1,525,344.00

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Respondent's Exhibit D

Page 1

STATEMENT IN SUPPORT OF CREDIT CLAIMED BY DOMESTIC CORPORATION FOR TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR A POSSESSION OF THE UNITED STATES

For Calendar Year 1942

For fiscal year beginning _____, 1942, and ending _____, 1943

Name of Corporation Reo Motors, Inc.

Address 1331 South Washington Ave. (Street and number) Lansing (City or town) Michigan (State)

SCHEDULE A—CREDIT CLAIMED AGAINST INCOME TAX

Claim for credit is made by the domestic corporation named above, based on income received (Received or accrued) for the taxable year beginning January 1, 1942, and ended December 31, 1942, for taxes paid (Paid or accrued), as follows:

I. Normal-tax net income from all sources (computed without (1) credit for income subject to excess profits tax and (2) deduction for any income, war-profits, and excess-profits taxes paid or accrued to foreign countries or possessions of the United States) $ 139,[illegible]35.45

II. Total United States income tax (before credits for foreign taxes) 52,134.18

Taxes Paid or Accrued During the Taxable Year to a Foreign Country or a Possession of the United States

Name of foreign country or possession imposing tax England

1. Net income from sources in this foreign country or possession (exclusive of dividends received) _____ (In foreign money) which (converted at an exchange rate of _____) equals in dollars (reported in corporation income tax return on line _____) $ _____

2. Dividends received from sources in this foreign country or possession £ 11,000 (In foreign money) which (converted at an exchange rate of 402) equals in dollars (reported in corporation income tax return on line 13) 44,220.

3. Total net income from sources in this foreign country or possession computed without deduction for any income and profits taxes imposed by any foreign country or possession of the United States (reported in corporation income tax return on line _____) $ 44,220

4. Amount of tax paid or accrued with respect to Item 1 (evidenced by attached receipt or return) _____ which (converted at an exchange rate of _____) equals in dollars $ _____

5. Amount of tax paid or accrued with respect to Item 2 by withholding at the source (evidenced by attached receipt or return) _____ which (converted at an exchange rate of _____) equals in dollars 17,687.56

6. Amount of tax deemed to have been paid or accrued with respect to Item 2 (Item 15, Schedule C, of this form) 17,687.56

7. Total of taxes paid or accrued (sum of Items 4, 5, and 6) $ 17,687.56

8. Ratio of net income from sources in this foreign country or possession to normal-tax net income from all sources (Item 3 divided by Item I) 31.927%

9. Amount of tax which may be claimed as credit under limitation of Section 131 (b) (1) (Item II, multiplied by Item 8, unless Item 7 is less than such amount, in which case Item 7 should be entered here)* $ 17,687.56

10. Statute imposing tax entered under Item 4 _____ (To be named fully and clearly as to be easily identified)

11. Statute imposing tax entered under Item 5 _____ (To be named fully and clearly as to be easily identified)

SUMMARY OF INCOME RECEIVED AND TAXES PAID, AS SHOWN IN SCHEDULES A

	Name of country or possession	Column A Income or loss		Name of country or possession	Column B Taxes
Schedule A, Item 8	England	$ 44,220	Schedule A, Item 9	England	$ 17,687.56
Schedule A, Item 8			Schedule A, Item 9		
Schedule A, Item 8			Schedule A, Item 9		
Total (enter as Item 12 below)		$	Total (enter as Item 13 below)		$

12. Total net income from sources without United States (total of Column A) $ 44,220

13. Total taxes paid or accrued to foreign countries or possessions of United States as separately limited (total of Column B) $ 17,687.56

14. Normal-tax net income from all sources (same as Item I, Schedule A) $ 139,[illegible]35.45

15. Ratio of net income from sources without United States to normal-tax net income from all sources (Item 12 divided by Item 14) 31.927%

16. Total United States income tax on Item 14 (same as Item II, Schedule A) $ 52,134.18

17. Amount of tax which may be claimed as a credit on corporation income tax return (Item 16 multiplied by Item 15, or Item 13 whichever amount is the smaller) $ 17,687.56

(SEE FOOTNOTES ON PAGE 2)

Respondent's Exhibit D

SCHEDULE B—CREDIT CLAIMED AGAINST EXCESS PROFITS TAX Page 2

Credit for taxes is sworn by the domestic corporation named above, based on excess profits and income ____ (dollars or cents) for the taxable year beginning ____, 19__, and ending ____, 19__, for taxes ____ (Paid or accrued), as follows:

I. Excess profits net income from all sources (computed without deduction for any income, war-profits, and excess-profits taxes paid or accrued to foreign countries or possessions of the United States) ..... $ None

II. Total United States excess profits tax (before credit for foreign taxes) ..... None

Taxes Paid or Accrued During the Taxable Year to a Foreign Country or a Possession of the United States[1]

Name of foreign country or possession imposing tax .....

1. Excess profits net income from sources in this foreign country or possession (computed without deduction for any income and profits taxes imposed by any foreign country or possession of the United States) ..... $

2. Total of taxes paid or accrued (computed as provided in section 720)[2] ..... $

3. Amount of tax claimed as credit (Item 9, page 1, Schedule B) under section 131 (b) (2), where applicable)[3] ..... $

4. Amount of tax to be considered for credit subject to limitations of section 720 (d) (Item 2 less Item 3) ..... $

5. Ratio of excess profits net income from sources in this foreign country or possession to excess profits net income from all sources (Item 1 divided by Item I) .....

6. Limitation on amount of tax credit under section 720 (d) (1) (Item II multiplied by Item 5) ..... $

7. Amount allowable as credit under section 720 (d) (1) (Item 4 or Item 6, whichever is smaller)[4] ..... $

SUMMARY OF INCOME RECEIVED AND TAXES PAID, AS SHOWN IN SCHEDULE B[5]

Name of country or possession	Column A Income or loss[6]	Name of country or possession	Column B Taxes
Schedule B, Item 1	$	Schedule B, Item 7	$
Schedule B, Item 1		Schedule B, Item 7	
Schedule B, Item 1		Schedule B, Item 7	
Total (enter as Item 8 below)	$	Total (enter as Item 9 below)	$

8. Total excess profits net income from sources without United States (total of Column A) ..... $
9. Total taxes paid or accrued to foreign countries or possessions of United States as separately limited (total of Column B) ..... $
10. Excess profits net income from all sources (same as Item I, Schedule B) ..... $
11. Ratio of excess profits net income from sources without United States to excess profits net income from all sources (Item 8 divided by Item 10) .....
12. Total United States excess profits tax on Item 10 (same as Item II, Schedule B) ..... $
13. Amount of tax which may be claimed as a credit against United States excess profits tax (Item 12 multiplied by Item 11, or Item 9 whichever amount is the smaller) ..... $

FOOTNOTES

[1] If the income tax return is based on income "accrued," or the corporation elects under Section 131 (d) to claim credit for taxes accrued, write "accrued" in the space provided. (See Section 131 (d) and Instructions on page 4.)

[2] State the amount in the currency of the foreign country or possession of the United States (e. g., pounds, francs, marks).

[3] Give rate of exchange used and attach a statement describing in reasonable detail why and how this particular rate was determined.

[4] Where payments were of taxes accrued for only 1 year, give dates of beginning and ending of such year in first column (e. g., July 1, 1921-June 30, 1922). Where the payments were of taxes accrued for more than 1 year, give in separate columns the dates of each accrual period during which any part of the tax payments accrued.

[5] Enter in each column for the accrual period used at the top the amount of the tax payments which accrued with respect to income of such period.

[6] Where there is more than one foreign country or possession of the United States to which taxes are paid by the domestic corporation, or more than one controlled foreign corporation, or more than one foreign country or possession of the United States to which taxes are paid on behalf of a controlled foreign corporation, additional schedules should be attached, and the amount shown in each foreign country or possession of the United States to which taxes are paid on behalf of a controlled foreign corporation, should be included in the summary of the income and the credit shown in each such schedule should be included in the summary.

[7] The term "foreign corporation" as used in Schedule C includes a domestic corporation entitled to the benefits of Section 251 or 252. (See Section 131 (g) on page 4.)

[8] If income was computed in any foreign country or possession of the United States, state the amount of such loss for such country or possession.

[9] A schedule is required to be prepared for each foreign country or possession of the United States from which net income is received or in which a net loss is sustained whether or not tax is paid to such foreign country or possession.

[10] If dividends received during the taxable year from a controlled foreign corporation must be considered under the statute to be paid out of the income of such corporation for a period of more than 1 year, a separate schedule containing the information required in Items 1 to 11, inclusive, of Schedule C, shall be submitted covering all years involved. The total of the amounts entered in Item 4 must agree with the amount shown in Item 1.

[11] The amount to be shown in Item 7, Schedule A, and Item 5 of Schedule C should be the profits from all sources whatsoever (whether or not subjected to foreign tax), from which, after deduction of the foreign tax shown in Item 7, the dividends may be deemed to have been paid by the foreign corporation.

[12] The sum of amounts shown in Item 8, Schedule A, from various foreign countries or possessions is subject to the limitation of Section 131 (b) (2), as computed in the summary.

[13] If a majority of outstanding of the voting stock was owned or controlled during the taxable year by the domestic corporation claiming credit, state the date when such change took place.

[14] Subscribe to be made in Item 6, Schedule C.

[15] Enter "none" in Item 6 unless dividends paid from accumulated profits shown therein.

[16] Include only dividends received from a foreign subsidiary of the controlled foreign corporation.

[17] The portion of the taxes paid by the foreign subsidiary of the controlled foreign corporation, which is deemed to have been paid by the controlled foreign corporation, will be computed by the same method employed in computing the portion of the tax paid by the controlled foreign corporation, which is deemed to have been paid by the domestic corporation.

[18] The sum of amounts shown in Schedule B, Item 7 from various foreign countries or possessions is subject to the limitation of Section 720 (d) (2) as computed in the summary.

[19] If excess profits net income is computed under the invested capital method, the amount of taxes paid or accrued listed in Item 3 or Item 4 will be adjusted to eliminate the portion of such taxes appropriate to dividends, credit for which is allowable under Section 711 (a) (2).

[20] In computing credit against excess profits tax, subtotals for the amounts shown in Items 3 and 14 of Schedule C the amounts shown in Items I and II of Schedule B, respectively, and in Item 13 of Schedule C substitute "excess profits net income" for "invested capital net income."

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Respondent's Exhibit D

Page 2

SCHEDULE G.—Taxes Paid or Accrued to a Foreign Country or a Possession of the United States by a Controlled Foreign Corporation or a Controlled Domestic Corporation Entitled to the Benefits of Section 131 of the Internal Revenue Code

Foreign corporation or corporation entitled to benefits of Sec. 131 or 262:

Name: Rec Motors, Ltd. Incorporated under the laws of: England

Address: Great West Road, Brentford, England
(Number and street) (City or town) (Country)

		Preferred	Common	Total
Capital stock	Number of shares outstanding		30,000	30,000
	Number of shares owned by domestic corporation		30,000	30,000
	Which stock has full voting rights?			

Date taxable year began ____, 19__, and ended ____, 19__

Name of foreign country or possession of United States imposing tax: England Character of tax (Income, war profits, or excess profits)

Statutes imposing tax
(To be named fully and clearly so as to be easily identified)

1. Amount received during the taxable year as dividends from each controlled foreign corporation: £ 11,000 (In foreign money) which (converted at an exchange rate of 4.02 *) equals in dollars $ 44,220

   Date and amount of each dividend payment: Jan. 1, 1942, £ 3,000; June 26, 1942, £ 8,000

2. Normal-tax net income of domestic corporation (same as Item I, page 1) $ 130,335.45

3. Total tax due United States on corporation income tax return (same as Item II, page 1) $ 52,134.18

	Taxable periods of controlled foreign corporation from income of which dividends were paid *		
	Year 1939	Year 1940	Year 1941
4. Dividends segregated according to years when profits from which they were paid were accumulated *	$ 16,080	$ 12,060	$ 16,080
5. Total profits of controlled foreign corporation before tax was deducted therefrom *	$ 40,895.46	$ 56,911.14	$ 73,280.58
6. Accumulated profits (total profits less tax thereon) out of which dividends were paid	£ 5,581 ,	£ 7,247 ,	£ 8,735 ,
which, converted at an exchange rate of *	$ 4.02 "	$ 4.02 "	$ 4.02 "
equals in dollars	$ 22,435.62	$ 29,116.86	$ 35,114.70
7. Amount of taxes paid or deemed to have been paid * under section 131 (f) (based upon attached tax receipts *) or taxes accrued, in foreign money upon Item 5	£ 4,592 ,	£ 6,914 ,	£ 8,494 ,
which, converted at an exchange rate of *	$ 4.02 "	$ 4.02 "	$ 4.02 "
equals in dollars	$ 18,459.84	$ 27,794.28	$ 35,165.88
8. Ratio of accumulated profits to total profits (Item 6 divided by Item 5)	54.86%	51.16%	47.92%
9. Tax paid on or with respect to accumulated profits (Item 7 multiplied by Item 8)	$ 10,127.07	$ 14,212.55	$ 16,849.09
10. Ratio of amount of dividends received to accumulated profits (Item 4 divided by Item 6)	71.67%	41.42%	45.79%
11. Amount of tax payments deemed to have been paid on profits distributed as dividends (Item 9 multiplied by Item 10)	$ 7,258.07	$ 5,889.74	$ 8,374.57
12. Ratio of amount of dividends received from controlled foreign corporation * to normal-tax net income including such dividends (Item 4 expressed in dollars divided by Item 2)	12.337%	9.253%	12.337%
13. Limitation on amount of tax payments made by controlled foreign corporation * which are deemed to have been paid by the domestic corporation (Item 3 multiplied by Item 12)	$ 6,431.79	$ 4,823.98	$ 6,431.79
14. Amounts of tax payments made by controlled foreign corporation * which are deemed to have been paid by the domestic corporation (Item 11 or Item 13, whichever is smaller)	$ 6,431.79	$ 4,823.98	$ 6,431.79

15. Total of tax payments deemed to have been paid on profits distributed as dividends (total of Item 14) $ 17,687.56

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this statement is made, being severally duly sworn, each for himself deposes and says that this statement has been examined by him and is to the best of his knowledge and belief a true and complete statement of facts relating to the credit for tax as provided in section 131 of the Internal Revenue Code.

Subscribed and sworn to before me this 20 day of May, 194 3

Cyrus J. Rath
(Signature of officer administering oath)
CYRUS J. RATH
NOTARY PUBLIC, INGHAM COUNTY, MICH.
MY COMMISSION EXPIRES DEC. 29, 1945

(Signature of president or other principal officer) (Name title)

(Signature of treasurer, assistant treasurer, or chief accounting officer) (Name title)

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Respondent's Exhibit D

EXTRACTS FROM SECTIONS 131 AND 729 OF THE INTERNAL REVENUE CODE

TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES

SEC. 131. (a) **Allowance of credit.**—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102 or section 450, shall be credited with:

(1) **Citizen and Domestic Corporation.**—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States;

* * * * * *

Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter.

(b) **Limit on credit.**—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income in the case of a taxpayer other than a corporation, or to the sum of the normal-tax net income and the amount of the credit for adjusted excess profits net income provided in section 26 (e), in the case of a corporation, for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income in the case of a taxpayer other than a corporation, or to the sum of the normal-tax net income and the amount of the credit for adjusted excess profits net income provided in section 26 (e), in the case of a corporation, for the same taxable year.

(c) **Adjustments on payment of accrued taxes.**—If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of the credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination, and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(d) **Year in which credit taken.**—The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(e) **Proof of credits.**—The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, each amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

(f) **Taxes of foreign subsidiary.**—

(1) **Foreign Subsidiary of Domestic Corporation.**—For the purposes of this section, a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid by such domestic corporation under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the normal-tax net income of the domestic corporation in which such dividends are included. The term "accumulated profits" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income, and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid, treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word "year" as used in this subsection shall be construed to mean such accounting period.

(2) **Foreign Subsidiary of Foreign Corporation.**—If such foreign corporation owns all the voting stock (except qualifying shares) of another foreign corporation from which it receives dividends in any taxable year it shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such other foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of the corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits.

(g) **Corporations treated as foreign.**—For the purposes of this section the following corporations shall be treated as foreign corporations:

(1) A corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its gross income from sources within a possession of the United States;

(2) A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), and entitled to the credit provided for in section 262.

(h) **Credit for taxes in lieu of income, etc. taxes.**—For the purposes of this section and section 23 (c) (1), the term "income, war-profits, and excess-profits taxes" shall include a tax paid in lieu of a tax upon income, war-profits, or excess-profits otherwise generally imposed by any foreign country or by any possession of the United States.

SEC. 729. (c) **Foreign taxes paid.**—In the application of section 131 for the purposes of this subchapter the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed with respect to such tax against the tax imposed by Chapter 1.

(f) **Limitations on amount of foreign tax credit.**—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within such country bears to his entire excess profits net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to his entire excess profits net income for the same taxable year.

INSTRUCTIONS

WHEN CREDIT FOR TAXES MAY BE TAKEN.—The credit for taxes provided by Section 131 (a) may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid, dependent upon whether the accounts of the taxpayer are kept and its returns filed upon the accrual basis or upon the cash receipts and disbursements basis. Where a taxpayer keeps its books of account on the accrual basis, a credit for taxes paid to a foreign country must also be taken on that basis and the time of payment of the taxes has in such case nothing to do with the time of credit. A taxpayer whose books of account are kept on the cash receipts and disbursements basis has the privilege of taking the credit for foreign taxes on an accrual basis, but if it elects to do so, the credit for foreign taxes with respect to all subsequent years must be taken upon the same basis. The basis (accrual or paid) adopted for credit under section 131 shall be the same under section 729.

U. S. GOVERNMENT PRINTING OFFICE 16—36710-1

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R E O M O T O R S, I N C.

LANSING, MICHIGAN

AVERAGE BORROWED CAPITAL - YEAR 1942

		Mortgage payable	Notes payable	Together	Net borrowed capital	Number of days	Dollars x days
Jan.	1	$97,392.54	$ -	$ 97,392.54	$ 97,392.54	3	$ 292,177.62
	3	(75.00)	-	(75.00)	97,317.54	5	486,587.70
	8	(40.00)	-	(40.00)	97,277.54	2	194,555.08
	10	(5,633.82)	-	(5,633.82)	91,643.72	5	458,218.60
	15	-	100,000.00	100,000.00	191,643.72	4	766,574.88
	19	(250.00)	-	(250.00)	191,393.72	2	382,787.44
	21	(24,000.00)	-	(24,000.00)	167,393.72	10	1,673,937.20
	31	-	125,000.00	125,000.00	292,393.72	5	1,461,968.60
Feb.	5	(338.40)	-	(338.40)	292,055.32	6	1,752,331.92
	11	-	275,000.00	275,000.00	567,055.32	10	5,670,553.20
	21	(250.00)	-	(250.00)	566,805.32	10	5,668,053.20
Mar.	3	-	250,000.00	250,000.00	816,805.32	3	2,450,415.96
	6	(24,000.00)	-	(24,000.00)	792,805.32	13	10,306,469.16
	19	(250.00)	-	(250.00)	792,555.32	28	22,191,548.96
Apr.	16	-	1,500,000.00	1,500,000.00	2,292,555.32	1	2,292,555.32
	17	-	(750,000.00)	(750,000.00)	1,542,555.32	1	1,542,555.32
	18	(250.00)	-	(250.00)	1,542,305.32	24	37,015,327.68
May	12	-	750,000.00	750,000.00	2,292,305.32	9	20,630,747.88
	21	(250.00)	-	(250.00)	2,292,055.32	29	66,469,604.28
June	19	(250.00)	-	(250.00)	2,291,805.32	13	29,793,469.16
July	2	(75.00)	-	(75.00)	2,291,730.32	18	41,251,145.76
	20	(250.00)	-	(250.00)	2,291,480.32	32	73,327,370.24
Aug.	21	(250.00)	-	(250.00)	2,291,230.32	3	6,873,690.96
	24	(25,000.00)	-	(25,000.00)	2,266,230.32	24	54,389,527.68
Sept.	17	(250.00)	-	(250.00)	2,265,980.32	2	4,531,960.64
	19	-	250,000.00	250,000.00	2,515,980.32	33	83,027,350.56
Oct.	22	(666.80)	-	(666.80)	2,515,313.52	30	75,459,405.60
Nov.	21	(250.00)	-	(250.00)	2,515,063.52	4	10,060,254.08
	25	(15,063.52)	-	(15,063.52)	2,500,000.00	24	60,000,000.00
Dec.	19	-	(2,500,000.00)	(2,500,000.00)	-	-	-
		$ -	$ -	$ -	$ -	353	$620,421,144.68

Average daily borrowed invested capital $ 1,699,783.96

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Respondent's Exhibit E

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Respondent's Exhibit E.

Form 1121
Treasury Department
Internal Revenue Service

COMPLETED RETURN

UNITED STATES
CORPORATION EXCESS PROFITS TAX RETURN
For Calendar Year 1942

1942

or fiscal year beginning ..... 1942, and ending 1943

File Code 607
Serial 3 05585
District Michigan

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.
(Name)

1331 South Washington Avenue
(Street and number)

Lansing. Ingham. Michigan
(Post office) (County) (State)

Business group serial number entered on page 1, Form 1120 105

Cash Check M. O.
First payment $

EXCESS PROFITS TAX COMPUTATION

		Column 1 Income Credit Method	Column 2 Invested Capital Credit Method
1	Excess profits net income (line 16, Schedule A)	$	$ 294,566 48
2	Specific exemption	$ 5,000	$ 5,000
3	Excess profits credit—based on income (line 46, Schedule B)	XXXXXXX	XXXXXXX
4	Excess profits credit—based on invested capital (line 41, Schedule C)	XXXXXXX	783,666 77
5	Unused excess profits credit adjustment (attach schedule)		1,307,848 67
6	Total of items 2 to 5	$	2,096,515 14
7	Difference between item 4 and item 6	$	(1,801,948 96)
8	Adjusted excess profits net income (item 7, column 1, or item 7, column 2, whichever is applicable)		None
9	90 percent of item 8		-
10	Net income (computed without regard to the credit provided by section 26 (e)) (item 35, page 1, Form 1120)		None
11	Less: (a) Dividends received credit (85 percent of total of column 2, Schedule E, Form 1120 (excluding dividends received on certain preferred stock of a public utility), but not in excess of 85 percent of item 10 above)	$ -	
	(b) Dividends paid on certain preferred stocks if taxpayer is a public utility (line 20, page 2, Form 1120)	-	-
12	Surtax net income (computed without regard to the credit provided by section 26 (e))		None
13	80 percent of item 12		-
14	Income tax under Chapter 1 (other than section 102) for the taxable year (item 41, page 1, Form 1120)		-
15	Excess of item 13 over item 14		$ -
16	Item 9 or item 15, whichever is lesser		-
17	Amount deferred by reason of the application of section 710 (a) (5) (relating to abnormality under section 722) (attach schedule)		-
18	Excess profits tax		
	(a) Item 16 minus item 17	$ -	
	(b) If schedule is filed under question (g), page 2, amount of tax as computed in such schedule	-	
	(c) Item 18 (a) or item 18 (b), whichever is applicable		$ -
19	Less: Credit for income taxes paid to a foreign country or United States possession allowed to a domestic corporation (portion not used in computing item 42, page 1, Form 1120)		None
20	Item 18 (c) minus item 19		None
21	Less: Credit for debt retirement (item 29, below)		-
22	Item 20 minus item 21		None
23	Amount (if any) due to application of section 734 (adjustment in case of position inconsistent with prior income tax basis) (attach schedule)		None
24	Excess profits tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable)		None

POST-WAR REFUND OF EXCESS PROFITS TAX AND CREDIT FOR DEBT RETIREMENT

25	Balance of excess profits tax (item 18 (c), above)		None
26	Credit allowable under sections 780 and 781 (10 percent of item 25) (but in cases where item 19 is applicable, see Specific Instructions 26)	$ -	
27	Net reduction in indebtedness under section 783		
28	Credit for debt retirement allowable under section 783 (40 percent of item 27, but not in excess of 10 percent of item 25)		None
29	Net post-war refund credit (item 26 minus 28)		

We the undersigned, president (or vice president, or other principal officer), and treasurer (or assistant treasurer, or chief accounting officer) of the ... corporation making the foregoing return, each for himself, deposes and says that this return (including any accompanying schedules and statements) has been made by ... and that to the best of his knowledge and belief it is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the Second Revenue Act of 1942.

Subscribed and sworn to before me this ..... day of ..... 194 ....

NOTARIAL SEAL

CORPORATE SEAL

I, the affiant, ... that I am ... and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information concerning the excess profits tax liability of the person for whom this return has been prepared, of which I have any knowledge.

Subscribed and sworn to before me this ..... day of 194

NOTARIAL SEAL

See affidavit attached

Respondent's Exhibit E

Page 2

QUESTIONS

(a) Date of incorporation January 2, 1940 (b) State or country Michigan

(c) Collector's office in which your income tax return for the taxable year was filed Detroit, Mich.

(d) Is this a consolidated return? No If so, procure from the collector Form 851, Affiliations Schedule, which shall be filed in, sworn to, and filed as a part of the consolidated income tax return

(e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b)(4) of the Internal Revenue Code? (Answer "yes" or "no") ...

(f) Are you a transferee or transferee upon an exchange as defined by section 780 or 781 of the Internal Revenue Code? (Answer "yes" or "no") .....

(g) Does this return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no") ..... If answer is "yes":

(1) Check the appropriate sections and submit schedules showing computation: 710(a)(4) ☐; 721 ☐; 726 ☐; 731 ☐; 735(b) ☐; 735(e) ☐; 736(a) ☐; 736(b) ☐. See General Instructions E, F, G, H, and I, and Special Instruction 12.)

(2) From the schedules submitted under (1) above, enter any tax adjustment which results from the application of each of the following sections: 721, $ .....; 726, $ .....; 731, $ .....

(3) From the schedules submitted under (1) above, enter any income adjustment which results from the application of each of the following sections: 721, $ .....; 731, $ .....; 735(b), $ .....; 735(e), $ .....

Schedule A. - EXCESS PROFITS NET INCOME COMPUTATION

Line No.		Column 1 Income Credit Method		Column 2 Invested Capital Credit Method	
1.	Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 27, page 1, Form 1120)	$		$ 290,811	94
2.	Net short-term capital gain (do not enter net short-term capital loss)			-	
3.	Adjustment to net operating loss deduction			26,414	51
4.	50 percent of interest on borrowed capital	xxxxxxx	xx	23,076	45
5.	Interest on Government obligations (see question (e), above, for election)	xxxxxxx	xx	-	
6.	Total of lines 1 to 5	$		$ 340,302	90
7.	Net gain from sale or exchange of capital assets (item 13 (a), page 1, Form 1120)	$		$ -	
8.	Income from retirement or discharge of bonds, etc			-	
9.	Refunds and interest on Agricultural Adjustment Act taxes			-	
10.	Recoveries of bad debts			1,476	42
11.	(a) Dividends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign corporations)				
	(b) Dividends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign personal holding companies and dividends received on stock held primarily for sale to customers by a dealer in securities)	xxxxxxx	xx	44,260	00
12.	Nontaxable income of certain industries with depletable resources			-	
13.	Total of lines 7 to 12	$		$ 45,736	42
14.	Excess profits tax net income computed without regard to deductions applicable to life insurance companies (line 6 minus line 13)	$		$ 294,566	48
15.	Deductions applicable to life insurance companies			-	
16.	Excess profits net income computed under income credit method or invested capital credit method (line 14, or line 14 minus line 15 in case of a life insurance company)	$		$ 294,566	48

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Respondent's Exhibit E

Schedule B.—EXCESS PROFITS CREDIT—BASED ON INCOME Page 2

Line No.	Taxable Years Beginning After December 31, 1939, and Period January 1, 1940 (If additional columns are required, attach separate schedules)			
	1. Year Ended ____ 19__	2. Year Ended ____ 19__	3. Year Ended ____ 19__	4. Year Ended ____ 19__
1. Normal-tax (or special-class) net income	$	$	$	$
2. Net capital loss used in computing line 1				
3. Securities which are capital assets deducted in computing line 1 as bad debts or as stock determined to be worthless (for taxable years beginning prior to January 1, 1938)				
4. Net loss from sale or exchange of property other than capital assets deducted in computing line 1 (for taxable years beginning after December 31, 1937)				
5. Net loss from involuntary conversion of property deducted in computing line 1				
6. Total of lines 1 to 5	$	$	$	$
7. Net capital gain used in computing line 1	$	$	$	$
8. Net gain from sale or exchange of property other than capital assets used in computing line 1 (for taxable years beginning after December 31, 1937)				
9. Net gain from involuntary conversion of property used in computing line 1				
10. Total of lines 7 to 9	$	$	$	$
11. Difference between lines 6 and 10	$	$	$	$
12. Net gain from sale or exchange of capital assets				
13. Net gain from sale, exchange, or involuntary conversion of property other than capital assets				
14. Total of lines 11 to 13	$	$	$	$
15. Net loss from sale, exchange, or involuntary conversion of property other than capital assets	$	$	$	$
16. Stock and securities of affiliated corporations which became worthless during the taxable year (if included in line 2, 3, or 7)				
17. Total of lines 15 and 16	$	$	$	$
18. Normal-tax (or special-class) net income after applying section 711 (b) (2) (line 14 minus line 17)	$	$	$	$
19. Net short-term capital gain (do not enter net short-term capital loss)				
20. Dividends received credit				
21. Deductions on account of retirement or discharge of bonds, etc.				
22. Casualty, demolition, and similar losses not taken into account in computing line 13, 18, or 15				
23. Repayment of processing tax to vendee				
24. (a) Abnormal judgment liabilities, etc. (attach statement)				
(b) Abnormal expenditures for intangible drilling and development costs (attach statement)				
(c) Other abnormal deductions (attach statement)				
25. Capitalization of expenditures for advertising or promotion of goodwill (attach statement)				
26. Total of lines 19 to 25	$	$	$	$
27. Income from retirement or discharge of bonds, etc.	$	$	$	$
28. Dividends received from domestic corporations				
29. Net gain from sale or exchange of capital assets (line 12, above)				
30. Total of lines 27 to 29	$	$	$	$
31. Excess profits net income (line 26 minus line 30)	$	$	$	$
32. Net aggregate of columns 1, 2, 3, and 4				$
33. Income in lowest year in base period (attach statement)				
34. Total of lines 32 and 33				$
35. Average base period net income—General average (line 34 divided by number of months in base period, multiplied by 12)				$

(Fill in lines 36 to 42 for computation of average base period net income where there are increased earnings in last half of base period)

36. Net aggregate of columns 3 and 4, line 31 (see instruction regarding limitation applicable to taxable year ending after May 31, 1940)	$	
37. Net aggregate of columns 1 and 2, line 31		
38. Excess of line 36 over line 37	$	
39. One-half of line 38		
40. Line 35 plus line 39	$	
41. Line 40 divided by number of months in second half of base period, multiplied by 12	$	
42. Average base period net income—Increased earnings in last half of base period (line 41, or the highest excess profits net income for any taxable year in the base period, whichever is lower)		$
43. 95 percent of line 35 or line 42, whichever is greater		$
44. Net capital addition, $_____; or net capital deduction, $_____ (attach statement)		
45. 8 percent of line 44, if a net capital addition (or 6 percent of line 44, if a net capital reduction)		
46. Excess profits credit—based on income (line 43 plus line 45, if a net capital addition) (or line 43 minus line 45, if a net capital reduction)		$

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Respondent's Exhibit E

Page 4

Schedule C.—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL

Line No.				
	Equity Invested Capital at the Beginning of the Taxable Year (See instructions for Schedule C, lines 1 to 12, inclusive)			
1.	Money paid in for stock, or as paid-in surplus, or as a contribution to capital			$ -
2.	Property paid in for stock, or as paid-in surplus, or as a contribution to capital			1,255,922 89
3.	Distributions of earnings and profits in stock of the corporation			-
4.	Accumulated earnings and profits			-
5.	25 percent of new capital paid in during a taxable year beginning after December 31, 1940			-
6.	Increase on account of intercorporate liquidation			-
7.	Deficit in earnings and profits of another corporation			-
8.	Total of lines 1 to 7			1,255,922 89
9.	Less: Distributions made prior to the taxable year not out of accumulated earnings and profits	$ -		
10.	Earnings and profits of another corporation required to be deducted by section 718 (b) (3)	-		
11.	Decrease on account of intercorporate liquidation	-		
12.	Deficit in earnings and profits in invested capital of another corporation	-		
13.	Total of lines 9 to 12			-
14.	Equity invested capital at beginning of taxable year (line 8 minus line 13)			1,255,922 89
	Average Additions to Equity Invested Capital During the Taxable Year (See instructions for Schedule C, lines 1 to 12, inclusive)			
15.	Money paid in for stock, or as paid-in surplus, or as a contribution to capital	$ -		
16.	Property paid in for stock, or as paid-in surplus, or as a contribution to capital	-		
17.	Distributions of earnings and profits (other than earnings and profits of the taxable year) in stock of the corporation (see line 24, below)	-		
18.	25 percent of new capital	-		
19.	Increase on account of intercorporate liquidation	-		
20.	Deficit in earnings and profits of another corporation	-		
21.	Total additions in lines 15 to 20			-
22.	Total of lines 14 and 21			1,255,922 89
	Average Reductions to Equity Invested Capital During the Taxable Year (See instructions for Schedule C, lines 1 to 12, inclusive)			
23.	Distributions not out of earnings and profits of the taxable year	$ -		
24.	Stock distributions from accumulated earnings and profits at beginning of year (see line 17, above)	-		
25.	Decrease on account of intercorporate liquidation	-		
26.	Deficit in earnings and profits included in invested capital of another corporation	-		
27.	Total reductions in lines 23 to 26			-
	(See instructions for Schedule C, lines 23 to 41, inclusive)			
28.	Average equity invested capital (line 22 minus line 27)			1,255,922 89
29.	Average borrowed capital (attach schedule)	666,783	96	
30.	Average borrowed invested capital (50 percent of line 29)			333,391 98
31.	Average invested capital (line 28 plus line 30)			1,589,314 87
32.	Total inadmissible assets	1,585,280	66	
33.	Total admissible and inadmissible assets	12,812,571	95	
34.	Percentage which line 32 is of line 33	12.76	%	
35.	Reduction on account of inadmissible assets (12.76 percent of line 31)			1,588,701 98
36.	Invested capital (line 31 minus line 35)			612 89
37.	Portion of line 36 (not in excess of $5,000,000); and credit at 8 percent	612.89	8%	49 00
38.	Portion of line 36 (over $5,000,000, but not over $10,000,000); and credit at 7 percent	5,000,000 00	7%	350,000 00
39.	Portion of line 36 (over $10,000,000, but not over $20,000,000); and credit at 6 percent	561,112 89	6%	33,666 77
40.	Portion of line 36 (over $20,000,000); and credit at 5 percent		5%	
41.	Excess profits credit—based on invested capital (total of lines 37 to 40)			383,666 77

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Respondent's Exhibit E

REO MOTORS, INC.

LANSING, MICHIGAN

LIST OF SCHEDULES ATTACHED TO RETURN ON FORM 1121

FOR THE YEAR 1942

Copy of letter granting extension of time for filing return

Affidavit re preparation of return

Item 5 - Unused excess profits credit adjustment

Schedule B,
Item 29 - Average borrowed capital

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Respondent's Exhibit E

TREASURY DEPARTMENT

Internal Revenue Service

Detroit, Michigan

In replying refer to:

March 11, 1943.

IT:JC:MMC

FORM 1121

Reo Motors, Incorporated,
1331 South Washington Avenue,
Lansing, Michigan.

Gentlemen:

IMPORTANT: PLEASE READ CAREFULLY

TENTATIVE RETURN MUST BE FILED

Receipt is acknowledged of your letter of recent date requesting for the reason given therein, extension of time within which to file your return for income for the calendar year 1942.

You are hereby granted an extension of time to May 15, 1943 within which to complete your return for the taxable year above mentioned: PROVIDED a tentative return is filed with the Collector of Internal Revenue for your district on or before March 18, 1943 and payments made at that time of at least one-fourth of the total estimated tax shown thereon to be due. (see attached instructions)

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules shown on the form need not be filled in.

A copy of this letter MUST BE ATTACHED to the tentative and completed returns as authority for the extention of time herein granted.

Respectfully,

GUY T. HELVERING, Commissioner

(Signed)
GILES KAVANAGH, Collector

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Respondent's Exhibit E

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

I, R. F. Woleben, acting on behalf of Price, Waterhouse & Co., 1946 Penobscot Building, Detroit, Michigan, as adviser for Reo Motors, Inc., affirm that pursuant to instructions received from E. E. Hund, President, I prepared the attached Federal corporation excess profits tax return for the year ending December 31, 1942, which shows excess profits net income (line 1) of $294,566.46 and no tax payable on the basis of information furnished by the said Reo Motors, Inc. in connection with an examination of the financial statements of the company; that the information set out in the return and accompanying schedules correctly and fairly reflects the information furnished to or discovered by me during the course of the preparation of the return and that said information is true to the best of my information and belief.

R. F. Woleben

Subscribed and sworn to before me
this 6th day of May, 1943.

James M. Cavanaugh
Notary Public, Wayne County, Michigan.
My commission expires 10/11/46.

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Respondent's Exhibit E

Item 5

R E O M O T O R S, I N C.

LANSING, MICHIGAN

UNUSED EXCESS PROFITS CREDIT ADJUSTMENT - YEAR 1942

	From year 1940	From year 1941
Excess profits credit based on invested capital:		
Equity invested capital representing property paid in for stock, or as paid-in surplus, or as a contribution to capital as at January 2, 1940, date of inception of taxpayer corporation	$11,255,922.89	$11,255,922.89
50% of average borrowed capital	351,308.74	304,350.47
Average invested capital	$11,607,231.63	$11,560,273.36

	1940	1941
Total inadmissible assets	$ 3,680,246.57	$ 2,257,352.42
Total admissible and inadmissible assets	$11,942,402.59	$11,175,973.49
% of inadmissible assets to total assets	30.82%	20.20%

Reduction on account of inadmissible assets	3,577,348.79	2,335,175.22
Invested capital	$ 8,029,882.84	$ 9,225,098.14
8% of $5,000,000	$ 400,000.00	$ 400,000.00
7% of balance of invested capital	212,091.80	295,756.87
Excess profits credit	$ 612,091.80	$ 695,756.87
Excess profits net income	None	None
Unused excess profits credit (Item 5, page 1 of return)	$ 612,091.80	$ 695,756.87

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Respondent's Exhibit F.

Form 1121 C
Treasury Department
Internal Revenue Service

AMENDED RETURN Original - 106585-E
1942

UNITED STATES CORPORATION EXCESS PROFITS TAX RETURN
For Calendar Year 1942

Page 1

1942

or fiscal year beginning ....., 1942, and ending ....., 1943

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Reo Motors, Inc.
(Name)

1331 South Washington Avenue
(Street and number)

Lansing (Post office) Ingham (County) Michigan (State)

Business group symbol number entered on page 1, Form 1120 105

File Code 1
Serial No.
District Detroit
(Collector's stamp)

Cash Check M. O.
Place payment

$

EXCESS PROFITS TAX COMPUTATION

Line		Column 1 Income Classes Separate	Column 2 Invested Capital Classes Separate
1	Excess profits net income (line 16, Schedule A)	$	$ 134,123 99
2	Specific exemption	$ 5,000	$ 5,000
3	Excess profits credit—based on income (line 40, Schedule B)		
4	Excess profits credit—based on invested capital (line 41, Schedule C)		783,668 97
5	Unused excess profits credit adjustment (attach schedule)		1,307,848 67
6	Total of items 2 to 5	$	$ 2,096,516 64
7	Difference between item 1 and item 6	$	$ 1,962,392 45)
8	Adjusted excess profits net income (item 7, column 1, or item 7, column 2, whichever is applicable)		$ None
9	80 percent of item 8		$ None
10	Net income (computed without regard to the credit provided by section 26 (e)) (item 36, page 1, Form 1120)		$
11	Less: (a) Dividends received credit (85 percent of total of column 2, Schedule E, Form 1120 (excluding dividends received on certain preferred stock of a public utility), but not in excess of 85 percent of item 10 above)	$	
	(b) Dividends paid on certain preferred stocks if taxpayer is a public utility (line 20, page 2, Form 1120)		
12	Surtax net income (computed without regard to the credit provided by section 26 (e))		$
13	80 percent of item 12		
14	Income tax under Chapter 1 (other than section 102) for the taxable year (item 41, page , Form 1120)		
15	Excess of item 13 over item 14		$
16	Item 9, or item 15, whichever is lesser		$ None
17	Amount deferred by reason of the application of section 710 (a) (5) (relating to abnormality under section 722) (attach schedule)		$
18	Excess profits tax: (a) Item 16 minus item 17	$	
	(b) If schedule is filed under question (g), page 2, amount of tax as computed in such schedule		
	(c) Item 18 (a) or item 18 (b), whichever is applicable		$ None
19	Less: Credit for income taxes paid to a foreign country or United States possession allowed to a domestic corporation (portion not used in computing item 42, page 1, Form 1120)		
20	Item 18 (c) minus item 19		$ None
21	Less: Credit for debt retirement (item 28, below)		
22	Item 20 minus item 21		$ None
23	Amount, if any, due to application of section 734 (adjustment in case of position [illegible] with prior income tax liability) (attach schedule)		
24	Excess profits tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable)		$ None

POST-WAR REFUND OF EXCESS PROFITS TAX AND CREDIT FOR DEBT RETIREMENT

25	Balance of excess profits tax (item 18 (c), above)	$ None
26	Credit allowable under sections 780 and 781 (10 percent of item 25, but not in excess of item 24, or item 25 minus item 24, whichever is applicable; see Specific Instructions 26-28)	$
27	Net reduction in indebtedness under section 783	$
28	Credit for debt retirement allowable under section 783 (40 percent of item 27, but not in excess of 10 percent of item 25)	
29	Net post war refund credit (item 26 minus 28)	$ None

Original - Amended - No Change in Tax Liability

We, the undersigned, president, vice president, or other principal officer) and treasurer, (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the Regulations issued thereunder.

Subscribed and sworn to before me this 15 day of ..... 194 .

(Signature of officer making this return)

(Title of officer making this return)

NOTARIAL SEAL

CORPORATE SEAL

I, the undersigned, certify that I am the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information concerning the excess profits tax liability of the person for whom this return has been prepared of which I have any knowledge.

Subscribed and sworn to before me this ..... day of 194

(Signature of person preparing the return)

(Signature of person preparing the return)

NOTARIAL SEAL

Affidavit attached

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Respondent's Exhibit F

Page 2

No change in answers **QUESTIONS** set forth in original return

(a) Date of incorporation ..... (b) State or country .....

(c) Collector's office in which your income tax return for the taxable year was filed .....

(d) Is this a consolidated return? ..... If so, procure from the collector Form 851, Affiliations Schedule, which shall be filed in, sworn to, and filed as a part of the consolidated income tax return.

(e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b)(4) of the Internal Revenue Code? (Answer "yes" or "no") .....

(f) Are you a transferee or transferor upon an exchange as defined by section 760 or 761 of the Internal Revenue Code? (Answer "yes" or "no") .....

(g) Does this return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no") ..... If answer is "yes":

(1) Check the appropriate sections and submit schedules showing computation: 710(a)(4) ☐; 721 ☐; 722 ☐; 731 ☐; 735(b) ☐; 736(a) ☐; 736(a) ☐; 736(b) ☐. (See General Instructions E, F, G, H, and I, and Special Instruction 12.)

(2) From the schedules submitted under (1) above, enter any tax adjustment which results from the application of each of the following sections: 721, $ .....; 722, $ .....; 731, $ .....

(3) From the schedules submitted under (1) above, enter any income adjustment which results from the application of each of the following sections: 721, $ .....; 731, $ .....; 735(b), $ .....; 736(a), $ .....

Schedule A.—EXCESS PROFITS NET INCOME COMPUTATION

Line No.		Column 1 Income Classes Excluded		Column 2 Income Classes Under Inquiry	
1.	Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit), (item 27, page 1, Form 1120)	$		$ 130,369	85
2.	Net short-term capital gain (do not enter net short-term capital loss)			-	
3.	Adjustment to net operating loss deduction			26,414	51
4.	80 percent of interest on borrowed capital	xxxxxxx	xx	23,076	45
5.	Interest on Government obligations (see question (e), above, for election)	xxxxxxx	xx	-	
6.	Total of lines 1 to 5	$		$ 179,860	81
7.	Net gain from sale or exchange of capital assets (item 13 (a), page 1, Form 1120)	$		$ -	
8.	Income from retirement or discharge of bonds, etc.			-	
9.	Refunds and interest on Agricultural Adjustment Act taxes			-	
10.	Recoveries of bad debts			1,376	42
11.	(a) Dividends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign corporations)			xxxxxxx	xx
	(b) Dividends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign personal holding companies and dividends received on stock held primarily for sale to customers by a dealer in securities)	xxxxxxx	xx	44,260	00
12.	Nontaxable income of certain industries with depletable resources			-	
13.	Total of lines 7 to 12	$		$ 45,636	42
14.	Excess profits tax net income computed without regard to deductions applicable to life insurance companies (line 6 minus line 13)	$		$ 134,223	99
15.	Deductions applicable to life insurance companies			-	
16.	Excess profits net income computed under income credit method or invested capital credit method (line 14, or line 14 minus line 15 in case of a life insurance company)	$		$ 134,223	99

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Respondent's Exhibit F

Schedule B.—EXCESS PROFITS CREDIT—BASED ON INCOME — Page 2

Line No.		Taxable Years Beginning After December 31, 1939, and Before January 1, 1940 (If additional columns are required, attach separate schedule)			
		1. Year Ended ..., 19..	2. Year Ended ..., 19..	3. Year Ended ..., 19..	4. Year Ended ..., 19..
1.	Normal-tax (or special-class) net income	$	$	$	$
2.	Net capital loss used in computing line 1				
3.	Securities which are capital assets deducted in computing line 1 as bad debts or as stock determined to be worthless (for taxable years beginning prior to January 1, 1938)				
4.	Net loss from sale or exchange of property other than capital assets deducted in computing line 1 (for taxable years beginning after December 31, 1937)				
5.	Net loss from involuntary conversion of property deducted in computing line 1				
6.	Total of lines 1 to 5	$	$	$	$
7.	Net capital gain used in computing line 1	$	$	$	$
8.	Net gain from sale or exchange of property other than capital assets used in computing line 1 (for taxable years beginning after December 31, 1937)				
9.	Net gain from involuntary conversion of property used in computing line 1				
10.	Total of lines 7 to 9	$	$	$	$
11.	Difference between lines 6 and 10	$	$	$	$
12.	Net gain from sale or exchange of capital assets				
13.	Net gain from sale, exchange, or involuntary conversion of property other than capital assets				
14.	Total of lines 11 to 13	$	$	$	$
15.	Net loss from sale, exchange, or involuntary conversion of property other than capital assets	$	$	$	$
16.	Stock and securities of affiliated corporations which became worthless during the taxable year (if included in line 2, 3, or 7)				
17.	Total of lines 15 and 16	$	$	$	$
18.	Normal-tax (or special-class) net income after applying section 711 (b) (2) (line 14 minus line 17)	$	$	$	$
19.	Net short-term capital gain (do not enter net short-term capital loss)				
20.	Dividends received credit				
21.	Deductions on account of retirement or discharge of bonds, etc.				
22.	Casualty, demolition, and similar losses not taken into account in computing line 12, 13, or 15				
23.	Repayment of processing tax to vendee				
24.	(a) Abnormal judgment liabilities, etc. (attach statement)				
	(b) Abnormal expenditures for intangible drilling and development costs (attach statement)				
	(c) Other abnormal deductions (attach statement)				$
25.	Capitalization of expenditures for advertising or promotion of goodwill (attach statement)				
26.	Total of lines 18 to 25	$	$	$	$
27.	Income from retirement or discharge of bonds, etc.	$	$	$	$
28.	Dividends received from domestic corporations				
29.	Net gain from sale or exchange of capital assets (line 12, above)				
30.	Total of lines 27 to 29	$	$	$	$
31.	Excess profits net income (line 26 minus line 30)	$	$	$	$
32.	Net aggregate of ... mns 1, 2, 3, and 4				$
33.	Income in lowest year in base period (attach statement)				
34.	Total of lines 32 and 33				$
35.	Average base period net income—General average (line 34 divided by number of months in base period, multiplied by 12)				$

(Fill in lines 36 to 42 for computation of average base period net income where there are borrowed earnings in last half of base period)

36.	Net aggregate of columns 3 and 4, line 31 (see instruction regarding limitation applicable to taxable year ending after May 31, 1940)	$	
37.	Net aggregate of columns 1 and 2, line 31	$	
38.	Excess of line 36 over line 37	$	
39.	One-half of line 38	$	
40.	Line 36 plus line 39	$	
41.	Line 40 divided by number of months in second half of base period, multiplied by 12	$	
42.	Average base period net income—Increased earnings in last half of base period (line 41, or the highest excess profits net income for any taxable year in the base period, whichever is lower)		$
43.	95 percent of line 35 or line 42, whichever is greater		$
44.	Net capital addition, $ ..., or net capital deduction, $ ... (attach statement)		
45.	9 percent of line 44, if a net capital addition (or 6 percent of line 44, if a net capital reduction)		
46.	Excess profits credit—based on income (line 43 plus line 45, if a net capital addition) (or line 43 minus line 45, if a net capital reduction)		$

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Respondent's Exhibit F

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Schedule C.—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL

Equity Invested Capital at the Beginning of the Taxable Year

1. Money paid in for stock, or as paid-in surplus, or as a contribution to capital
2. Property paid in for stock, or as paid-in surplus, or as a contribution to capital
3. Distributions of earnings and profits in stock of the corporation
4. Accumulated earnings and profits
5. 50 percent of new capital paid in during a taxable year beginning after December 31, 1940
6. Increase on account of intercorporate liquidation
7. Deficit in earnings and profits of another corporation
8. Total of lines 1 to 7
9. Less: Distributions made prior to the taxable year not out of accumulated earnings and profits
10. Earnings and profits of another corporation required to be deducted by section 718 (b) (2)
11. Decrease on account of intercorporate liquidation
12. Deficit in earnings and profits in invested capital of another corporation
13. Total of lines 9 to 12
14. Equity invested capital at beginning of taxable year (line 8 minus line 13)

Average Additions to Equity Invested Capital During the Taxable Year

15. Money paid in for stock, or as paid-in surplus, or as a contribution to capital
16. Property paid in for stock, or as paid-in surplus, or as a contribution to capital
17. Distributions of earnings and profits (other than earnings and profits of the taxable year) in stock of the corporation (also line 24, below)
18. 50 percent of new capital
19. Increase on account of intercorporate liquidation
20. Deficit in earnings and profits of another corporation
21. Total additions in lines 15 to 20
22. Total of lines 14 and 21

No change in schedule as set forth in original return

Average Reductions in Equity Invested Capital During the Taxable Year

23. Distributions not out of earnings and profits of the taxable year
24. Stock distributions from accumulated earnings and profits at beginning of year (see line 17, above)
25. Decrease on account of intercorporate liquidation
26. Deficit in earnings and profits included in invested capital of another corporation
27. Total reductions in lines 23 to 26

(See Instructions for Schedule C, lines 28 to 41, inclusive)

28. Average equity invested capital (line 22 minus line 27)
29. Average borrowed capital (attach schedule)
30. Average borrowed invested capital (10 percent of line 29)
31. Average invested capital (line 28 plus line 30)
32. Total indebtedness
33. Total adjustable and nonadjustable assets
34. Percentage which line 32 is of line 33
35. Reduction on account of nonadjustable assets (_____ percent of line 31)
36. Invested capital (line 31 minus line 35)
37. Portion of line 36 (not in excess of $5,000,000); and credit at 8 percent
38. Portion of line 36 (over $5,000,000, but not over $10,000,000); and credit at 7 percent
39. Portion of line 36 (over $10,000,000, but not over $20,000,000); and credit at 6 percent
40. Portion of line 36 (over $20,000,000); and credit at 5 percent
41. Excess profits credit—based on invested capital (total of lines 37 to 40)

8% 7% 6% 5%

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Respondent's Exhibit F

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

I, A. S. Currie, acting on behalf of Price, Waterhouse & Co., 1946 Penobscot Building, Detroit, Michigan, as adviser for Reo Motors, Inc., affirm that pursuant to instructions received from Mr. H. E. Hund, President, I prepared the attached amended Federal corporation excess profits tax return for the year ending December 31, 1942, which shows excess profits net income (line 1) of $134,123.99 and no tax payable on the basis of information furnished by the said Reo Motors, Inc. in connection with an examination of the financial statements of the company; that the information set out in the return and accompanying schedules correctly and fairly reflects the information furnished to or discovered by me during the course of the preparation of the return and that said information is true to the best of my information and belief.

A. S. Currie

Subscribed and sworn to before me
this 19th day of May, 1943.

Louise H Cavanaugh
Notary Public, Wayne County, Michigan.
My commission expires 10/11/46.

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Respondent's Exhibit F

R E O M O T O R S, I N C.

LANSING, MICHIGAN

STATEMENT ATTACHED TO AMENDED RETURN ON FORM 1121

1942

This amended return is filed solely for the purpose of giving effect to a reduction in normal-tax net income as set forth in an amended return on Form 1120 filed concurrently herewith.

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Findings of Fact and Opinion.

THE TAX COURT OF THE UNITED STATES

REO MOTORS, INC., *Petitioner*, *v.* COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Docket No. 6409. Promulgated September 10, 1947.

In 1941 petitioner sustained a loss resulting from the worthlessness of a subsidiary's stock. Under section 23 (g) as constituted in 1941 such loss is a capital loss, but under section 23 (g) as constituted in 1942 such loss would be an ordinary loss. Section 122 (d) (4), as applied to the instant case, has the effect of excluding petitioner's stock loss in computing the 1941 net operating loss for purposes of a net operating loss deduction in 1942 if such stock loss is a capital loss. *Held*, section 23 (g) as constituted in 1941, the year giving rise to the stock loss, controls and establishes the character of the loss as capital. Such loss must consequently be excluded from the net operating loss computation under section 122 (d) (4). *Moore, Inc.*, 4 T. C. 404; affd., 151 Fed. (2d) 527, distinguished.

JAMES O. WYNN, Esq., and G. HAROLD BLATTMACHR, Esq., for the petitioner.

LEONARD RAUM, Esq., and PHILLIP M. CLARK, Esq., for the respondent.

Respondent determined deficiencies in petitioner's income tax and excess profits tax for the calendar year 1942 in the respective amounts of $565,971.65 and $268,655.14. These deficiencies were based on numerous adjustments to petitioner's net income, many of which are not contested by petitioner. With respect to the disallowance of a net oper-

ating loss deduction, numerous issues were raised by petitioner in the petition, all of which, except one, were abandoned at the hearing. The question remaining for decision is whether the petitioner is entitled to a net operating loss deduction in 1942 arising out of a loss due to the worthlessness in 1941 of the stock of Reo Sales Corporation.

The case was submitted upon a stipulation of facts and documentary exhibits introduced in evidence. The facts stipulated are so found, but only those pertinent to the question here presented are set forth in our findings of fact. Other facts are found from the exhibits.

FINDINGS OF FACT.

Petitioner, a corporation, was organized on January 2, 1940, under the laws of the State of Michigan. It is engaged in the business of manufacturing motor vehicles and has its principal office at 1331 South Washington Avenue, Lansing, Michigan. Petitioner's income and declared value excess profits tax returns and excess profits tax return for the calendar year 1942 were prepared on an accrual basis and filed with the collector of internal revenue for the district of Michigan.

In January 1940 petitioner acquired all the shares of stock of Reo Sales Corporation, hereinafter referred to as Reo Sales, a sales agent for the petitioner. Thereafter, until the dissolution of Reo Sales, all of its stock was owned directly by the petitioner. Petitioner's adjusted basis for determining gain or loss from the sale or other disposition of such stock was $1,551,902.79. More than 90 per cent of the aggregate of the gross income of Reo Sales for all taxable years was from sources other than royalties, rents, dividends, interest, annuities, or gains from sales or exchanges of stocks and securities.

Findings of Fact and Opinion

On February 1, 1941, Reo Sales was indebted to petitioner in the sum of $1,263,707.57. During the calendar year 1941 Reo Sales was dissolved and as of February 1, 1941, all of its assets, subject to all its liabilities, were transferred to the petitioner. The net value of such assets was $1,048,219.95.

Petitioner received no compensation for any loss sustained by it on the dissolution of Reo Sales. Such loss with respect to the stock of Reo Sales was a long term capital loss under the law applicable to the taxable year 1941. It was so claimed by petitioner in its return for 1941 and was allowed by the respondent.

Petitioner's gross income for the taxable year 1941 was $2,573,259.89. During 1941 petitioner received no interest which was wholly exempt from tax imposed by chapter 1 of the Internal Revenue Code and realized no gains from the sale or exchange of capital assets. Deductions allowable to the petitioner by chapter 1 of the Internal Revenue Code, not including any deduction with respect to the stock of Reo Sales, any deduction for depletion, any net operating loss deduction, or any deduction for losses from sales or exchanges of capital assets, amounted to $2,215,727.08. Such amount included a bad debt deduction of $215,487.62, representing the difference between the amount of the indebtedness of Reo Sales to petitioner on February 1, 1941, and the net value of the assets received by the petitioner from Reo Sales. No tax imposed by subchapter E of chapter 2 of the Internal Revenue Code was paid or accrued by petitioner within the taxable year 1941.

For the taxable year 1942 the net income of petitioner, without allowance of a net operating loss deduction and without any depletion deduction, was $1,926,136.34. During

the taxable year 1942 petitioner received no interest exempt from the taxes imposed by chapter 1 of the code, received no interest for which a credit was provided under section 26 (a) of the code, and realized no gains and sustained no losses from sales or exchanges of capital assets. Petitioner's normal tax net income, computed without any net operationg loss deduction and without the credit provided in section 26 (e) of the code, was $1,926,102.34.

In computing petitioner's net income for 1942 respondent did not allow any net operating loss deduction and explained this action in the letter accompanying the deficiency notice as follows:

> The net loss for the year 1941 resulted chiefly from the deduction of an amount of $1,552,248.16 from the worthlessness in 1941 of your investment in the stock of a subsidiary. This stock was a capital asset under the Internal Revenue Code for 1941 and constituted a capital loss in 1941 and was allowed as a long term capital loss deductible without limitation as claimed in your return for the year 1941. In computing the amount of the net operating loss deduction claimed in 1942 you included therein as part of the net operating loss carry-over from 1941 the loss of $1,552,248.16 sustained by you in 1941 on the stock of the subsidiary. You contend that under Section 23 (g) (4) of the Internal Revenue Code as amended by the Revenue Act of 1942 the loss on dissolution in 1941 of your wholly owned subsidiary company is not a capital loss for the purpose of determining the 1941 net operating loss deduction carried over to 1942.
>
> It is held that the net operating loss deduction allowable for the year 1942 is to be determined under the Internal Revenue Code as it existed in the year in which the net operating loss was sustained. There-

fore, under the Internal Revenue Code in effect for the year 1941, the capital loss of $1,552,248.16 sustained upon dissolution of your subsidiary company is not allowable as a deduction in determining the net operating loss carry-over to the year 1942.

OPINION.

HILL, *Judge*: The loss sustained by petitioner in 1941 by virtue of Reo Sales Corporation stock becoming worthless is a capital loss under section 23 (g) of the Internal Revenue Code as that section was constituted in 1941. However, under the provisions of section 23 (g) [1] as that section was constituted in 1942, if the same loss had occurred in 1942 it would not have been a capital loss, but an ordinary loss. If the loss in question is a capital loss, then it must be excluded from a net operating loss computation by virtue of section 122 (d) (4) of the code.[2] If, however, the loss in question is an ordinary loss, then it may be included in the

[1] Section 23 (g) (4) provides in part that "stock in a corporation affiliated with taxpayer shall not be deemed a capital asset." Section 23 (g) as constituted in 1941 contained no such provision.

Subdivision (4) of section 23 (g) was added by section 123 of the Revenue Act of 1942. In the same act section 101 provides that "Except as otherwise expressly provided, the amendments made by this title [Title I] shall be applicable only with respect to taxable years beginning after December 31, 1941."

[2] Section 122 (d) (4), as constituted in 1941, provides that long term capital gains and losses shall be taken into account without regard to the provisions of section 117 (b). It further provides that long term capital losses shall not exceed the amount includible on account of long term capital gains and that short term capital losses shall not exceed the amount includible on account of short term capital gains. This section was amended in 1942 so as to limit capital losses to the amount of capital gains without regard to long or short term aspects. This change has no importance in the instant case, because petitioner had no capital gains of any kind in 1941.

deductions entering into the net operating loss computation. The question presented, therefore, is whether section 23 (g) as constituted in 1941, or as constituted in 1942, the year of the net operating loss deduction, governs the character of the 1941 stock loss as a capital loss or as an ordinary loss for purposes of section 122 (d).

Petitioner contends that section 23 (g) as constituted in 1942 governs and that the 1941 stock loss is, therefore, an ordinary loss and, as such, is available for inclusion as a deduction in computing the net operating loss for 1941. Petitioner relies on our decision in *Moore, Inc.*, 4 T. C. 404; affd., 151 Fed. (2d) 527, as supporting its contention. Respondent contends that section 23 (g) as constituted in 1941 governs and that the 1941 stock loss is, therefore, a capital loss and, as such, must be excluded as a deduction in computing the net operating loss for 1941. We think respondent's position is correct.

Section 122 (d),[3] set forth in the margin, enumerates certain exceptions, additions, and limitations as adjust-

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[3] Section 122 (d), as constituted in 1942, provides as follows:

"(d) EXCEPTIONS, ADDITIONS, AND LIMITATIONS. — The exceptions, additions, and limitations referred to in subsections (a), (b), and (c) shall be as follows:

"(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4);

"(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23 (b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations;

"(3) No net operating loss deduction shall be allowed:

ments which have to be made in computing the net operating loss deduction for any given year beginning after December 31, 1941. The particular limitation or adjustment with which we are here concerned is the one set forth in subdivision (4) of section 122 (d), relating to capital gains and losses. We are faced with the question of whether subdivision (4), added to section 23 (g) by the Revenue Act of 1942, renders the provisions of subdivision (4) of section 122 (d) inapplicable to the stock loss in question in computing net operating loss in 1941 for a carry-over deduction in 1942.

It will be borne in mind that we are here considering not a net operating loss sustained in 1942, but a deduction in the year 1942 of a claimed net operating loss sustained in 1941. Under the law as it existed in 1941 the stock in respect of which the loss in question was sustained was a capital asset, but if the stock in question had been similarly held in 1942, it would not be a capital asset because of the adding in that year of subdivision (4) to section 23 (g). Since the operative effect of subdivision (4) of section 23 (g) is confined

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"(4) Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 117 (b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains.

"(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions, additions, and limitations specified in paragraphs (1) to (4) of this subsection.

"(6) There shall be allowed as a deduction the amount of tax imposed by Subchapter E of Chapter 2 paid or accrued within the taxable year, subject to the following rules—

* * * * * * * *"

to tax years beginning after December 31, 1941, it appears that whether the stock loss here in question was a capital loss or an ordinary loss for the purpose of computing a net operating loss in 1941 is determinable under the law as it existed in 1941. Should it be determined that there was a net operating loss in 1941, the deductibility thereof in 1942 would be determinable under section 122 subject to the exceptions, additions, and limitations set forth in subparagraph (d) thereof as it existed in 1942. We have seen above that section 122 (d) (4) excludes capital losses in excess of capital gains in the computation of a deduction for a net operating loss. Also, under section 122 as it existed in 1941, in the computation of a net operating loss deduction, capital losses, both long term and short term, are excluded to the extent that they respectively exceed long term and short term capital gains.

Furthermore, it appears that under section 23 (g) as it existed in 1941 the stock loss here in question was a capital loss. Under the limitation of section 101 of the Revenue Act of 1942, section 23 (g) (4) of the 1942 Act was "applicable only with respect to taxable years beginning after December 31, 1941." Hence, the stock loss of 1941 did not lose its character as a capital loss by virtue of section 23 (g) (4) of the 1942 Act.

It will be borne in mind that section 122 (d) relates solely to the deduction of a net operating loss carry-over and provides in subdivision (4) that there shall not be included in the computation of such deduction capital losses in excess of capital gains. It does not purport to define capital loss or capital gain or operate in any way to change the character thereof retroactively or otherwise.

Findings of Fact and Opinion

Whether capital losses arising in 1941 constitute an element of adjustment in computing a net operating loss for 1941 for purposes of a net operating loss deduction in 1942 depends on whether section 122 (d) as constituted in 1942 so provides. But whether an item of gain or loss arising in 1941 is capital or ordinary depends on the law of 1941. In *Moore, Inc., supra*, we held that, in determining whether there was a deductible net operating loss carry-over to 1942 from 1941 under section 122 (d) (4) as it existed in 1942, there should be eliminated from the gross income of 1941 the amount of capital gains to the extent they were offset by capital losses, irrespective of the long term or short term character thereof as provided in the above designated section. The determination there did not involve the question we have here, namely, whether subdivision (4), added by the 1942 Act to section 23 (g) as it existed in 1941, retroactively converted a capital asset to a noncapital asset and hence, in the instant case, a capital loss to an ordinary loss.

The *Moore* case dealt only with the question of whether section 122 (d) (4) of the 1942 Act, instead of section 122 (d) (4) as it existed in 1941, governed the treatment to be accorded gains and losses arising from sales or exchanges of capital assets in determining whether there was a deductible net operating loss carry-over from 1941 to 1942. It did not involve the question of whether a change was retroactively effected in the character of such assets from capital to noncapital assets by virtue of the provisions of sections 23 (g) (4) and 122 (d) (4) as they existed in 1942. In fact, section 23 (g) (4) was not involved in the question in the *Moore* case. Hence, the decision in the *Moore* case

is not a precedent for determining the effective date or other operative effect of section 23 (g) (4).

It is our opinion, and we so hold, that the effect of section 23 (g) (4) is prospective only, beginning with the year 1942; also, that the character of the loss here in question is determined by the law existing in 1941 as a capital loss and must be accordingly treated in determining whether under section 122 (d) (4) of the 1942 Act there was a deductible net operating loss carry-over from 1941 to 1942. The obvious effect of this holding is to deny the net operating loss deduction claimed by petitioner.

Other arguments are made by both parties, based on various canons of construction. These arguments have been carefully considered, but do not alter the conclusion we have reached herein.

Reviewed by the Court.

Decision will be entered under Rule 50.

LEECH, *J.*, dissenting: In my opinion the *ratio decidendi* in *Moore, Inc.*, 4 T. C. 404; affd., 151 Fed. (2d) 527, applies with equal force here and requires the opposite conclusion to that of the majority.

Decision.

THE TAX COURT OF THE UNITED STATES

WASHINGTON

REO MOTORS, INC., *Petitioner,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DOCKET NO. 6409

Pursuant to the findings of fact and opinion of the Court promulgated September 10, 1947, the respondent filed on October 30, 1947 his proposed recomputation therein, and the petitioner on the same date filed its acquiescence in said recomputation. Now, therefore, it is

ORDERED AND DECIDED: That for the year 1942 there are deficiencies in income tax and excess-profits tax in the respective amounts of $565,971.65 and $268,655.14.

Enter:

(Signed) WILLIAM W. ARNOLD
Judge.

Entered November 5, 1947.

[SEAL]

Petition for Review of Decision of the Tax Court of the United States.

IN THE TAX COURT OF THE UNITED STATES

[Filed December 11, 1947.]

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	TAX COURT DOCKET NO. 6409

To the Honorable the Circuit Justice and the Circuit Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The petition of REO MOTORS, INC. respectfully shows:

FIRST: THE PARTY SEEKING THE REVIEW. The party seeking the review is Reo Motors, Inc., a corporation organized and existing under the laws of the State of Michigan, with its principal office and place of business at 1331 South Washington Avenue, Lansing 20, Michigan, hereinafter referred to as the "petitioner".

SECOND: THE TAXABLE PERIOD INVOLVED. The taxable period involved is the calendar year 1942.

THIRD: THE COURT BY WHICH REVIEW IS SOUGHT. The court by which review is sought is the United States Circuit Court of Appeals for the Sixth Circuit.

FOURTH: VENUE. The office of the United States Collector of Internal Revenue to which was made the returns of the tax in respect of which the alleged liability of the petitioner arises is the office of the Collector of Internal Revenue for the Collection District of Michigan at Detroit, Michigan, which office is located in the Sixth Judicial Circuit of the United States. On November 5, 1947, The Tax Court of the United States rendered the decision for the review of which this petition is filed.

WHEREFORE, petitioner petitions for the review of said decision of The Tax Court of the United States.

ROBERT H. MONTGOMERY
Robert H. Montgomery,
Attorney for Petitioner,
One East Forty-fourth Street,
New York 17, New York.

Notice of Filing Petition for Review.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

[Filed December 11, 1947.]

REO MOTORS, INC., *Petitioner on Review,* *vs.* COMMISSIONER OF INTERNAL REVENUE, *Respondent on Review.*	DOCKET NO. 6409

To: Charles Oliphant,
Bureau of Internal Revenue.

You are hereby notified that Reo Motors, Inc., did, on the 11th day of December, 1947, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 11th day of December, 1947.

(Signed) VICTOR S. MERSCH
Victor S. Mersch, Clerk.
The Tax Court of the United States.

Notice of Filing Petition for Review

Service of copy of Petition for Review acknowledged this 11th day of Dec. 1947.

(Signed) CHARLES OLIPHANT
CAR.
Bureau of Internal Revenue,
Attorney for Respondent.

Statement of Points.

THE TAX COURT OF THE UNITED STATES

[Filed February 18, 1948.]

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	T. C. DOCKET No. 6409

Now comes REO MOTORS, INC., the petitioner herein, by its attorney, ROBERT H. MONTGOMERY, and hereby asserts the following errors, which it intends to urge on review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of The Tax Court of the United States rendered in the above cause on November 5, 1947.

1. The Tax Court of the United States erred in determining that the loss of $1,552,902.79 sustained by the petitioner in the year 1941 by reason of the worthlessness in that year of the stock of Reo Sales Corporation should be excluded in determining the amount of the net operating loss deduction allowable as a deduction for the year 1942 under the provisions of sections 23(s) and 122 of the Internal Revenue Code.

Statement of Points

2. The Tax Court of the United States erred in finding in its opinion that the provisions of section 23(g) of the Internal Revenue Code, as that section was constituted in 1941, are applicable in determining whether a loss sustained in 1941 (on the worthlessness of stock in that year) may be included in the determination for the year 1942 of the amount of the net operating loss deduction (computed in accordance with section 122 of the Internal Revenue Code, as that section was constituted in 1942, and allowable as a deduction for the year 1942 under section 23(s) of the Internal Revenue Code).

3. The Tax Court of the United States erred in failing to find that the provisions of section 23(g) of the Internal Revenue Code, as that section was constituted in 1942, are applicable in determining whether a loss sustained in 1941 (on the worthlessness of stock in that year) may be included in the determination for the year 1942 of the amount of the net operating loss deduction (computed in accordance with section 122 of the Internal Revenue Code, as that section was constituted in 1942, and allowable as a deduction for the year 1942 under section 23(s) of the Internal Revenue Code).

4. The Tax Court erred in entering its decision wherein it ordered and decided that there are deficiencies in the petitioner's income tax and excess-profits tax in the respective amounts of $565,971.65 and $268,655.14 for the calendar year 1942.

ROBERT H. MONTGOMERY,
Robert H. Montgomery,
Attorney for Petitioner,
916 Investment Building,
Washington, D. C.

Petitioner's Designation of the Portions of the Record, Proceedings and Evidence to be Contained in the Record on the Review by the United States Circuit Court of Appeals for the Sixth Circuit of the Decision in This Proceeding of the Tax Court of the United States.

THE TAX COURT OF THE UNITED STATES

[Filed February 18, 1948.]

REO MOTORS, INC., *Petitioner on Review,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent on Review.*	T. C. DOCKET No. 6409

To the Clerk of the Tax Court of the United States:

You will please transmit to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit a typewritten copy of the record on the review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision in this proceeding by The Tax Court of the United States. The petitioner hereby designates the portions of the record, proceedings and evidence to be contained in said record on appeal as follows:

1. The docket entries of all proceedings before The Tax Court of the United States.

Petitioner's Designation of Record with Proof of Service Thereon

2. Pleadings before The Tax Court of the United States as follows:

(a) The Petition

(b) The Answer

(c) The Amended Petition

(d) The Answer to the Amended Petition.

3. The Stipulation of Facts (omitting the Exhibits thereto, namely, Stipulation Exhibits 1, 2 and 3).

4. The Findings of Fact and Opinion of The Tax Court of the United States.

5. The Decision of The Tax Court of the United States.

6. The Petition for Review of the Decision of The Tax Court of the United States which was filed on December 11, 1947.

7. Petitioner's Statement of Points, a copy of which is annexed hereto.

8. This, the Petitioner's Designation of the Portions of the Record, Proceedings and Evidence to be Contained

Petitioner's Designation of Record with Proof of Service Thereon

in the Record on the Review by the United States Circuit Court of Appeals for the Sixth Circuit of the Decision in this Proceeding of The Tax Court of the United States.

9. Proof of service upon the respondent of the Petitioner's Designation of the Portions of the Record, Proceedings and Evidence to be Contained in the Record on the Review by the United States Circuit Court of Appeals for the Sixth Circuit of the Decision in this Proceeding of The Tax Court of the United States.

ROBERT H. MONTGOMERY,
Robert H. Montgomery,
Attorney for Petitioner,
916 Investment Building,
Washington, D. C.

Personal service of a copy of the foregoing designation is hereby acknowledged this 18th day of February, 1948.

(Signed) CHARLES OLIPHANT,
CAR.
Chief Counsel
Bureau of Internal Revenue

Designation of Additional Portions of Record.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

[Filed February 24, 1948.]

REO MOTORS, INC., *Petitioner on Review,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent on Review.*	T. C. DOCKET No. 6409

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, copies duly certified as correct, of the following additional documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Sixth Circuit, heretofore filed by the taxpayer, petitioner herein:

1. "Stipulation Exhibits" 1, 2 and 3 attached to Stipulation of Facts.
2. Respondent's Exhibits A, B, C, D, E & F.
3. Following excerpts from Official Report of Proceedings before The Tax Court of the United States held at Washington, D. C., January 10, 1946:

Designation of Additional Portions of Record

Page 5, beginning with line 3 through *page 8* ending at bottom of page.

Page 12, beginning with line 8 through *page 14* ending with line 23.

4. This Designation of additional portions of record.

Said transcript, including copies of the above-mentioned designated additional document and records, to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Sixth Circuit.

(Sgd) THERON L. CAUDLE CAR
Theron L. Caudle
Assistant Attorney General.

(Signed) CHARLES OLIPHANT CAR
Charles Oliphant
Chief Counsel
Bureau of Internal Revenue.

Notice of filing Designation of additional portions of record, together with a copy of such designation, mailed the taxpayer's attorney, Robert H. Montgomery, Esquire, 916 Investment Bldg., Washington, D. C. on the 24th day of February.

CRM/has 2/2/448

Petitioner's Supplemental Designation of Additional Portions of the Record to Be Contained in the Record on Review by the United States Circuit Court of Appeals for the Sixth Circuit of the Decision of the Tax Court of the United States.

THE TAX COURT OF THE UNITED STATES

[Filed February 27, 1948.]

REO MOTORS, INC., *Petitioner on Review,* *v.* COMMISSIONER OF INTERNAL REVENUE, *Respondent on Review.*	T. C. DOCKET No. 6409

To the Clerk of The Tax Court of the United States:

The attorney for the petitioner is in receipt from the respondent of a notice of filing Designation of Additional Portions of Record, together with a copy of said Designation, dated February 24, 1948. While the petitioner believes that the additional documents and records requested in said Designation of Additional Portions of Record are not essential to the decision of the questions presented by the appeal to the Circuit Court of Appeals for the Sixth Circuit in the above entitled cause, since respondent has filed his said Designation, the petitioner requests you to please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit copies certified as correct of additional portions of the

Petitioner's Supplemental Designation of Additional Portions of Record with Proof of Service Thereon

record to be contained in the said record on appeal, as follows:

1. Excerpt from Official Report of Proceedings before The Tax Court of the United States held in Washington, D. C. on January 10, 1946 page 14 beginning with line 25 to page 16 ending with line 4. A copy of said excerpt is annexed hereto.

2. This, the Petitioner's Supplemental Designation of Additional Portions of the Record to be Contained in the Record on Review by the United States Circuit Court of Appeals for the Sixth Circuit of the Decision of The Tax Court of the United States.

3. Proof of service upon the respondent of the Petitioner's Supplemental Designation of Additional Portions of the Record to be Contained in the Record on Review by the United States Circuit Court of Appeals for the Sixth Circuit of the Decision of The Tax Court of the United States.

ROBERT H. MONTGOMERY
Robert H. Montgomery,
Attorney for Petitioner,
916 Investment Building,
Washington, D. C.

Personal service of a copy of the foregoing Supplemental Designation is hereby acknowledged this 27th day of Feb., 1948.

CHARLES OLIPHANT CAR.
Chief Counsel
Bureau of Internal Revenue

PRINTER'S NOTE:

The excerpt from the official report is set forth, *supra*, pages 95 and 96 and is therefore not repeated here.

Certificate.

THE TAX COURT OF THE UNITED STATES

WASHINGTON

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	DOCKET NO. 6409

I, VICTOR S. MERSCH, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 211, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 2nd day of March, 1948.

VICTOR S. MERSCH
Clerk,
The Tax Court of the United States.

EMT.

[SEAL]

Order Enlarging Time

THE TAX COURT OF THE UNITED STATES

WASHINGTON

REO MOTORS, INC., *Petitioner*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	DOCKET NO. 6409

Upon motion of counsel for petitioner, to which respondent interposes no objection, it is

ORDERED that the time for preparation, transmission and delivery of the record *sur* petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Sixth Circuit is extended to March 10, 1948.

(Signed) BOLON B. TURNER
Presiding Judge.

Dated: Washington, D. C.
January 12, 1948

evd

Now: March 2, 1948, the foregoing order is certified from the record as a true copy.

VICTOR S. MERSCH,
Victor S. Mersch,
Clerk.

[fol. 216] TRANSCRIPT OF PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED—October 11, 1948

Before Martin, McAllister and Miller, JJ.

This cause is argued by James O. Wynn for petitioner and by Carlton Fox for Respondent and is submitted to the court.

JUDGMENT—Entered November 29, 1948

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

[fol. 217] OPINION—Filed November 29, 1948

[fol. 218] [Stamp:] Filed Nov. 29, 1948. John W. Menzies, Clerk

No. 10661

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REO MOTORS, INC., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

On Petition to Review the Decision of the Tax Court of the United States

Decided November 29, 1948

Before Martin, McAllister and Miller, Circuit Judges

MILLER, Circuit Judge:

The Reo Motors, Inc., seeks a redetermination of the deficiency found by the Commissioner in Petitioner's income tax and excess profit tax for the calendar year 1942 in the respective amounts of $565,971.65 and $268,655.14. The Tax Court sustained the Commissioner. Reo Motors, Inc., 9 T. C. 314.

The Petitioner was organized on January 2, 1940 under the laws of Michigan and is engaged in the business of manufacturing motor vehicles with its principal office in Lansing, Michigan. Its tax returns for the calendar year 1942 were prepared on an accrual basis.

In January 1940, Petitioner acquired all the stock of Reo Sales Corporation, (hereinafter called Reo Sales), a sales agent for the Petitioner, which it continued to own until the dissolution of the subsidiary. The adjusted basis for determining gain or loss from the sale or other disposition of such stock was $1,551,902.79.

On February 1, 1941, Reo Sales was indebted to Petitioner in the sum of $1,263,707.57. Reo Sales was dissolved as of February 1, 1941 and all of its assets, subject to all its liabilities, were transferred to the Petitioner. The net value [fol. 219] of such assets was $1,048,219.95. Petitioner's loss with respect to the stock of Reo Sales was a long term capital loss under the law applicable to the taxable year 1941, and was so claimed by the Petitioner and allowed by the Commissioner in Petitioner's return for 1941.

Petitioner's gross income for the taxable year 1941 was $2,573,259.89. It realized no gains from the sale or exchange of capital assets. Deductions allowable to the Petitioner amounted to $2,215,727.08, not including any deduction with respect to the stock of Reo Sales, any deduction for depletion, any net operating loss deduction, or any deduction for losses from sales or exchanges of capital assets.

For the taxable year 1942, the net income of Petitioner was $1,926,136.34, without allowance of a net operating loss deduction or any depletion deduction. It realized no gains and sustained no losses from sales or exchanges of capital assets. In computing its normal taxable net income the Petitioner included as a deduction a net operating loss carry-over from 1941 sustained by reason of its ownership of the stock of Reo Sales. It contended that under Section 23(g)(4) of the Internal Revenue Code as amended by the Revenue Act of 1942 the loss in 1941 was not a capital loss,

but should be treated as an ordinary loss for the purpose of determining the 1941 net operating loss deduction carried over to 1942. The Commissioner, however, ruled that the stock was a capital asset under the Internal Revenue Code for 1941; the loss sustained in 1941 by reason of its ownership constituted a capital loss in 1941 and was so allowed; the 1942 Amendment was not applicable to the transaction; and that the loss could not be included in computing a net operating loss deduction in 1941 and carried forward into the 1942 return. He accordingly rejected the deduction in determining the net taxable income for 1942.

Under Sec. 23(g) of the Internal Revenue Code as it existed in 1941, the Petitioner, in computing its net income, was allowed a deduction for capital assets becoming worthless during the taxable year. Under that law, the loss sustained by the Petitioner in 1941 by virtue of its ownership of the Reo Sales Corporation stock was a capital loss, as distinguished from an operating loss, and was correctly treated as such in its return for the 1941 taxable year. Section 23(g) was amended by Section 123 of the Revenue Act of 1942 by adding Sec. 23(g)(4) which provided that for the purpose of determining capital losses by reason of capital assets becoming worthless during the taxable year [fol. 220] "stock in a corporation affiliated with the taxpayer shall not be deemed a capital asset." It also defined an affiliated corporation, which definition, it is agreed by the parties, included the Reo Sales Corporation. Accordingly, if the loss had occurred in 1942 it would not have been a capital loss under the 1942 Amendment, but would have been a loss which could be included in the net operating loss computation and deduction under Sections 23(s), 122(a), and 122(b)(2).

Section 23(s) of the Internal Revenue Code, as amended in 1939, provides that in computing net income there shall be allowed as a deduction "For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under Section 122." Section (122a) provides that "the term 'net operating loss' means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d)." Section 122(b)(2) provides for a net operating loss carryover for each of the two succeeding taxable years. If there was a net operating loss for 1941 under Section

122(a), the amount thereof constituted a net operating loss carry-over under Section 122(b)(2), allowable as a deduction under Section 23(s) in computing the amount of Petitioner's net income for 1942. The question presented for decision is whether the Petitioner is entitled, by reason of the 1942 Amendment to a net operating loss deduction in 1942, arising out of a loss due to the worthlessness in 1941 of the stock of Reo Sales.

We are of the opinion that the ruling of the Tax Court is correct and that Section 23(g)(4) added by the Revenue Act of 1942, changing the character of stock in an affiliated corporation from a capital asset to a non-capital asset, was not applicable to the year 1941. This would seem to necessarily follow from Section 101 of the Revenue Act of 1942 which provides that "Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941." There was no other express provision with respect to the applicability of Section 23(g)(4). To apply Section 23(g)(4) to the taxable year 1941 would be in direct violation of this express provision of the 1942 Amendment. Petitioner, however, urges upon us several reasons why in its opinion that provision is not decisive of the case. We discuss them briefly.

Most of them stem from the rulings of the Tax Court and the Court of Appeals for the Fifth Circuit in the case of *Moore, Inc.*, 4 T. C. 404, affirmed 151 Fed. (2d) [fol. 221] 527. That case involved a consideration of Section 122(d)(4) of the Internal Revenue Code as amended by the Revenue Act of 1942, dealing with the allocation of capital losses against capital gains. Both the Tax Court and the Court of Appeals held that with respect to taxpayer's tax liability for the taxable year 1942, Section 122(d)(4) of the Internal Revenue Code, as amended in 1942, was applicable instead of its provisions as they existed in 1941 in determining whether there was a deductible net operating loss carry-over from 1941 to 1942. Although the *Moore* case dealt with Section 122(d)(4), while our present case deals with Section 23(g) (4), the Petitioner insists that the rationale of the two cases is the same and that the cases can not properly be distinguished, although the Tax Court in the present case attempts to so distin-

guish them. The Commissioner concedes in his argument in this case that the cases are not properly distinguishable, but insists that the ruling in the *Moore* case is erroneous and should not be followed. In any event, the Tax Court here did not follow its previous ruling in the *Moore* case or the ruling of the Court of Appeals affirming that judgment. The ruling of the Court of Appeals for the Fifth Circuit is advisory with us rather than controlling in our conclusion, even if the same issue was involved. Regardless of whether the same or a different issue was presented and decided in the *Moore* case, upon which question we find it unnecessary to make a ruling, we are of the opinion that the result reached by the Tax Court in the present case is correct.

It is contended that the taxpayer's liability for 1942, computed under the 1942 Amendment, requires the use of a formula given by the 1942 Act to compute the amount of the net operating loss for 1941, which, however, has nothing to do with the tax liability for 1941. This result is reached by pointing out that the words in Sec. 101 of the Revenue Act of 1942 reading "shall be applicable only with respect to taxable years beginning after December 31, 1941" means the same thing as "shall be applicable only in computing a tax liability for taxable years beginning after December 31, 1941." The argument might have some merit if the words of the statute are so changed, but we are not authorized to change them, and we believe there is a substantial difference between the phrase "with respect to" as it stands in the statute and the phrase "in computing a tax liability for" as urged by Petitioner. It is true that in the present case we are not computing a tax liability for 1941, but if we make [fol. 222] the 1942 Amendment applicable to the transaction in 1941 we are making it applicable "with respect to" a transaction in the taxable year 1941 contrary to the provisions of the amendment.

Petitioner also contends that under pertinent provisions of prior Revenue Acts, permitting carry-overs of net operating losses from earlier years in computing net income and taxes for a succeeding taxable year, it was expressly provided that such losses should be computed under the law in effect during the earlier period, [Section 206(e) and (f) of the Revenue Act of 1924; Section

206(e) of the Revenue Act of 1926; and Section 117(e) of the Revenue Act of 1932], and that there is no such provision in the Revenue Act of 1942. Such a distinction in statutory provisions is usually a useful aid in statutory construction, but the argument loses its force in the present case because of the express provisions of Section 101 of the 1942 Amendment, which as stated above, expressly provides that "Except as otherwise expressly provided," the amendments are applicable only with respect to taxable years beginning after December 31, 1941. After having put that provision in the 1942 Amendment, Congress could have given Section 23(g)(4) retroactive application by expressly providing that it should be applicable to transactions in preceding years in cases where a tax liability was being computed for taxable years beginning after December 31, 1941, involving transactions in such prior years. The fact that Congress included Sec. 101 in the 1942 Amendment and provided by it that another rule would apply where it was so expressly provided, and then failed to so provide for the application of a different rule, is more convincing to us than the rule of construction urged upon us by Petitioner.

Furthermore, the net operating loss carry-over provisions of Section 122(b)(2) often would bring several taxable years into consideration. Under Petitioner's construction of Section 101 the net operating loss in any *given* year would not be a fixed quantity, but with changes in the taxing act would vary from year to year. Such a result argues against the proposed construction.

Petitioner further claims that Senate Report No. 1631, 77th Congress, Second Session, Pages 122-124 sustains its construction of the amendment. It is contended that the Report on the then pending legislation states that the carry-overs to the year 1941 from the years 1939 and 1940 would be determined in accordance with the amendments made by Section 122 of the 1942 Act. That part of the Re- [fol. 223] port referred to explains the amendments made in the carry-over provisions of Section 122 of the Revenue Code. The amendment added a provision permitting net operating loss carry-backs. The Report was not dealing with Section 23(g)(4), herein involved. It was discussing both carry-overs and carry-backs under Section

122. It seems clear that a carry-back into previous years of a net operating loss in the current year would be governed by the law of the current year, which is the year in which the transactions giving rise to the loss occurred. Such is the effect of the ruling of the Tax Court in *The Cambria Collieries Co.* v. *Commissioner*, 10 T. C. No. 151, involving a carry-back rather than a carry-over. Considered in its context and entirety, we do not believe that the Report is properly susceptible of the construction claimed by Petitioner.

Petitioner also claims that Section 29.117-7 of Regulations 111 sustains its contention. That section provides for the application of Section 117(j)(2) of the Internal Revenue Code, added by the Revenue Act of 1942, to a transaction occurring in 1941, in computing a tax liability for 1942, notwithstanding the provisions of Section 101 of the 1942 Act that the Amendments shall be applicable only with respect to taxable years beginning after December 31, 1941. The section, however, deals with installment sales, where the taxpayer has elected to return the profit in proportionate amounts over a period of years, as allowed by Section 44 of the Code. Under such circumstances, the profit received in a year subsequent to the year of sale is reported as profit for that year and has not been included in taxpayer's gross income in the year of sale. *Commissioner* v. *South Texas Co.*, 333 U. S. 496. Such subsequent installment payments are properly governed by the law of the year in which received. The regulation deals with a situation entirely different from the one here involved.

Nor do we think that the decision in *Forstmann* v. *Rogers*, 128 Fed. (2d) 126, C. C. A. 3rd, first cited by Petitioner at the oral argument, supports its contention. In substance, it held that the gain or loss on a transaction which was completed in 1929 was governed by the law applicable to the taxable year 1929. Other sections of the Code referred to for the first time in Petitioner's reply brief did not have the consideration of the Tax Court and appear more technical than convincing. See *Helvering* v. *Wood*, 309 U. S. 344, 349; *Helvering* v. *Tex-Penn Co.*, 300 U. S. 481, 498. We believe that the Tax Court correctly analyzed the problem when it said: "It [fol. 224] will be borne in mind that we are here considering

not a net operating loss sustained in 1942, but a deduction in the year 1942 of a claimed net operating loss sustained in 1941." There was no net operating loss in 1941 under the law applicable to that taxable year.

The judgment of the Tax Court is affirmed.

[fol. 226] ORDER DENYING PETITION FOR REHEARING—Filed February 1, 1949

Petitioner's petition for rehearing having been considered by the Court,

It is ordered that the same be and is overruled.

[fol. 227] UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Reo Motors, Inc., vs. Commissioner of Internal Revenue, No. 10,661, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 7th day of February, A. D. 1949.

J. W. Menzies, Clerk of the United States Court of Appeals for the Sixth Circuit. (Seal.)

[fol. 228] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 6, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3282)

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FILED
APR 25 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, ~~1948~~ 1949

No. ~~[redacted]~~ 59 59

REO MOTORS, INC.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner,
916 Investment Building,
Washington 5, D. C.

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IN THE

Supreme Court of the United States

October Term, 1948

No. _____

REO MOTORS, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Reo Motors, Inc. respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit to review a judgment of that Court entered in this case on November 29, 1948 and upon which a petition for rehearing was overruled by an order of the Court entered on the 1st day of February, 1949; and therefore shows as follows:

I.

A summary and short statement of the matter involved.

This action involves the petitioner's United States income and excess profits tax liability for the calendar year 1942. The United States Court of Appeals for the Sixth

Circuit affirmed (R. p. 216) a decision favorable to the respondent in The Tax Court of the United States (R. p. 201).

The facts in this case were stipulated. The facts essential and relevant to an understanding of the nature of the controversy and of the question involved on appeal are as follows:

The petitioner, a corporation, was organized on January 2, 1940, under the laws of the State of Michigan (Stipulation, paragraphs First and Sixth, R. pp. 54, 55). It is engaged in the trade or business of manufacturing motor vehicles (Stipulation, paragraph Thirty-fifth, R. p. 62).

In January, 1940, the petitioner acquired all of the shares of stock of Reo Sales Corporation (hereinafter referred to as Reo Sales), a corporation (Stipulation, paragraph Twelfth, R. p. 56), and a sales agent for the petitioner (Stipulation, paragraph Thirty-fifth, R. p. 62). Thereafter, until the dissolution of Reo Sales, all of its stock was owned directly by the petitioner (Stipulation, paragraph Twelfth, R. p. 56). Petitioner's adjusted basis for determining gain or loss from the sale or other disposition of the stock of Reo Sales was $1,551,902.79 (Stipulation, paragraph Fifteenth, R. p. 57).

On February 1, 1941, Reo Sales was indebted to the petitioner in the sum of $1,263,707.57. During the calendar year 1941, Reo Sales was dissolved and as of February 1, 1941, all of its assets, subject to all its liabilities, were transferred to the petitioner. The net value of such assets was $1,048,219.95 (Stipulation, paragraph Fourteenth, R. p. 57).

The loss sustained by the petitioner on the dissolution of Reo Sales was not compensated for by insurance or otherwise. The loss with respect to the stock of Reo Sales was a long-term capital loss under the law applicable to the

taxable year 1941 (Stipulation, paragraph Sixteenth, R. p. 57). It was so claimed by the petitioner in its return for 1941 and allowed by the respondent (Exhibit A annexed to the Petition and Amended Petition, R. pp. 17, 43; Stipulation, paragraph Third, R. p. 55).

For the petitioner's taxable year 1941, its gross income was $2,573,259.89 (Stipulation, paragraph Twenty-second, R. p. 59). The deductions allowable to the petitioner by Chapter 1 of the Internal Revenue Code (not including any deduction with respect to the stock of Reo Sales, any deduction for depletion, any net operating loss deduction, or any deduction for losses from sales or exchanges of capital assets) were $2,215,727.08 (Stipulation, paragraphs Seventeenth, Nineteenth, Twentieth and Thirty-fourth, R. pp. 58, 59).

For the taxable year 1942 the net income of the petitioner, without the allowance of a net operating loss deduction and without the allowance of any deduction for depletion, was $1,926,136.34 (Stipulation, paragraphs Twenty-fourth and Twenty-fifth, R. p. 59). The petitioner's normal tax net income, computed without the allowance of a net operating loss deduction, without the allowance of any deduction for depletion and without the credit provided in section 26(e) of the Internal Revenue Code, was $1,926,102.34 (Stipulation, paragraphs Twenty-fourth, Twenty-fifth, and Twenty-eighth, R. pp. 59, 60).

In computing its income and excess profits tax liability for the year 1942 the petitioner claimed as a deduction allowable under section 23(s) of the Internal Revenue Code a net operating loss deduction (R. pp. 124, 143, 163). Upon audit of the petitioner's tax return for the year 1942, the respondent determined that the loss sustained by the petitioner in 1941 on the worthlessness in that year of the

stock of the Reo Sales must be eliminated in the determination of the amount of a net operating loss deduction allowable for the year 1942, and as a result of that determination, together with other adjustments which are not in dispute, the respondent recomputed the petitioner's income for the year 1942, in which recomputation no net operating loss deduction was allowed (R. pp. 14-22).

II.

A statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the judgment of the United States Court of Appeals for the Sixth Circuit.

(a) The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States.

The Supreme Court of the United States has jurisdiction to review the judgment of the United States Court of Appeals by reason of the provisions of Section 1254 of Title 28 of the United States Code (Public Law 773—80th Congress, Chapter 646, 2d Session).

(b) The date of the judgment sought to be reviewed and the date upon which the petition for a writ of certiorari is presented.

(1) The date of the judgment sought to be reviewed is November 29, 1948 (R. p. 216). A petition for rehearing thereon was overruled by an order of the United States Court of Appeals for the Sixth Circuit on February 1, 1949 (R. p. 235).

(2) The date upon which the petition for a Writ of Certiorari is presented is April 25, 1949.

III.

The question presented.

The question presented is as follows:

Is the petitioner, in computing its tax liability for the year 1942, entitled to include in determining its net operating loss deduction allowable for 1942 the loss sustained by it in the year 1941 by reason of the worthlessness in that year of the stock of Reo Sales Corporation?

IV.

The reasons relied on for the allowance of the writ.

The decision herein of the United States Court of Appeals for the Sixth Circuit is in conflict, both in result and theory, with the decision of the United States Court of Appeals for the Fifth Circuit in *Commissioner of Internal Revenue* v. *Moore, Inc.* (151 F. (2d) 527, aff'g 4 T. C. 404). Further, the United States Court of Appeals for the Sixth Circuit has decided an important question of federal law which has not been, but should be, settled by the Supreme Court of the United States.

1. In the *Moore, Inc.* case, as in the instant case, the issue before the Court was the determination of the taxpayer's tax liability for the year 1942, the specific question in each case being the amount, if any, of the net loss deduction allowable in 1942 under sections 23(s) and 122 of the Internal Revenue Code (Title 26 of the United States Code) on account of a net loss sustained in 1941. In both cases, if the law applicable to 1942 was determinative, the taxpayer was entitled to a net loss deduction in computing its 1942 tax liability. On the other hand, if the law, as it existed in 1941, was applicable, the taxpayer in neither case would be entitled to the deduction. In both cases, the change in

the law between 1941 and 1942 was effected by the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2d Session) and by section 101 of that Act was made "applicable only with respect to taxable years beginning after December 31, 1941."

In the *Moore, Inc.* case, both The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit held that since the question in issue was the determination of tax liability for 1942, the law applicable to the year 1942 governed and that the taxpayer was entitled to recover. In the instant case, the United States Court of Appeals for the Sixth Circuit held that the law applicable to 1941 and not 1942 governed and that the taxpayer was not entitled to recover. The basic conflict between the two theories applied in the two cases is illustrated by the diametrically opposed interpretations of the provisions of section 101 of the Revenue Act of 1942 which states:

> "Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941."

In its opinion in the *Moore, Inc.* case, The Tax Court said (4 T. C. 404, 406):

> "Certainly, in its present context, 'with respect to' could mean nothing less than 'in computing a tax liability for.' Thus, paraphrasing section 101, *supra*, section 122(d)(4) of the Internal Revenue Code, as amended by section 150(e) of the Revenue Act of 1942, the provision would read 'shall be applicable * * * in computing a tax liability for taxable years beginning after December 31, 1941.' The question here is the tax liability of petitioner for such a year —the calendar year 1942. * * *"

In affirming the decision of The Tax Court, the United States Court of Appeals for the Fifth Circuit said (151 F. (2d) 527, 528):

> "And we are not left to conjecture as to when the amendment was to become effective, for the amending Act, at the beginning of Part I, Title 1, which consists of amendments to the Revenue Code, declares in Sect. 101, 56 Stat. 802, 26 U. S. C. A. Int. Rev. Acts, 'Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.' There is no 'otherwise' provision. So this amendment applies with respect to taxable years beginning after December 31, 1941. It therefore applies with respect to the taxable year 1942. It is with respect to taxation for that year that the carry-over produced by a capital loss is here claimed as a deduction; and to ascertain what if anything is deductible by way of carry-over from 1941, we think, as did the Tax Court, that by the express words of the amended Section 122(d)(4), 'gains and losses from sales or exchanges of capital assets shall be taken into account' without any reference to what sort of result would have been figured out in 1941 under the then law. * * * "

In striking contrast to the foregoing statements, the United States Court of Appeals for the Sixth Circuit said in the instant case (R. p. 220):

> "It is contended that the taxpayer's liability for 1942, computed under the 1942 Amendment, requires the use of a formula given by the 1942 Act to compute the amount of the net operating loss for 1941, which, however, has nothing to do with the tax liability for 1941. This result is reached by pointing out that the words in Sec. 101 of the Revenue Act of 1942 reading 'shall be applicable only with respect to taxable years beginning after December 31, 1941'

means the same thing as 'shall be applicable only in computing a tax liability for taxable years beginning after December 31, 1941.' The argument might have some merit if the words of the statute are so changed, but we are not authorized to change them, and we believe there is a substantial difference between the phrase 'with respect to' as it stands in the statute and the phrase 'in computing a tax liability for' as urged by Petitioner. * * * "

In its opinion in this case, The Tax Court attempted to distinguish the *Moore, Inc.* case on the ground that there an amendment to section 122(d)(4) of the Internal Revenue Code was involved, whereas here, the amendment was to section 23(g)(4). However, as pointed out in the opinion of the United States Court of Appeals herein (R. p. 220), the respondent has specifically conceded that the two cases are not properly distinguishable. The fact is that in both cases, the loss involved could be excluded in the computation of the net operating loss deduction only through the operation of section 122(d)(4) of the Internal Revenue Code. In the *Moore, Inc.* case, there was involved a change in the language of section 122(d)(4) itself, whereas in the instant case, the definition of a term used in section 122(d)(4) was changed in section 23(g)(4). The distinction suggested by The Tax Court is that if "with respect to" 1942 a word in section 122(d)(4) is changed, such amendment is effective in the computation of 1942 tax liability, whereas, if the definition of a term appearing in section 122(d)(4) is changed in another section also "with respect to" 1942, the amendment is not applicable in the computation of 1942 tax liability. The difference between the two cases is manifestly inconsequential and the cases are not distinguishable.

2. The basic issue involved in the instant case is whether the law applicable to 1941 or the law applicable to 1942 is determinative in the computation of the petitioner's

1942 tax liability. The determination of that issue is dependent, in part at least, upon the interpretation of section 101 of the Revenue Act of 1942 which provides:

> "Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941."

The use of the words "with respect to taxable years beginning after" a particular date is not unique in section 101 of the Revenue Act of 1942 but represents the general method used by Congress in specifying the effective date of amendments to the Internal Revenue Code. See for example, section 229 of the Revenue Act of 1939, Public Law No. 155, 76th Congress, Chapter 247, 1st Session; sections 105 and 203 of the Revenue Act of 1948, Public Law No. 471, 80th Congress, Chapter 168, 2d Session. Consequently, the decision below in the instant case involves an important question of federal law, not limited in its application to the years 1941 and 1942 or to the specific questions presented in this case or in the *Moore, Inc.* case, but which is applicable to other years as well and to other situations where an event occurring in one taxable year has an effect upon the computation of tax liability for a subsequent or prior taxable year. We submit that the importance of the question and the general applicability of the principle involved require a determination by this Court.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this honorable Court directed to the United States Court of Appeals for the Sixth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and com-

plete transcript of the record and all proceedings in this cause to the end that the said cause may be reviewed and determined by this Court according to law; and that your petitioner may have such other and further relief as to this Court may seem proper and in conformity with law.

And your petitioner will ever pray.

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner.

Dated: April 22, 1949.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported in 170 F. (2d) 1001 (see pp. 216-223 of the Record). The opinion of The Tax Court of the United States is reported in 9 T. C. 314 (see pp. 191-200 of the Record).

Jurisdiction.

The grounds on which the jurisdiction of the Supreme Court of the United States is invoked are set forth beginning at page 4 herein, in the Petition for Writ of Certiorari.

Statement of the Case.

The facts are as set forth, beginning at page 1 herein, in the Petition for Writ of Certiorari.

Specification of Errors.

1. The United States Court of Appeals for the Sixth Circuit erred in determining that the loss of $1,551,902.79 sustained by the petitioner in the year 1941 by reason of the worthlessness in that year of the stock of Reo Sales Corporation should be excluded in determining the amount of the net operating loss deduction allowable as a deduction for the year 1942 under the provisions of sections 23(s) and 122 of the Internal Revenue Code.

2. The United States Court of Appeals for the Sixth Circuit erred in finding in its opinion that the provisions of section 23(g) of the Internal Revenue Code, as that sec-

tion was constituted in 1941, are applicable in determining whether a loss sustained in 1941 (on the worthlessness of stock in that year) may be included in the determination for the year 1942 of the amount of the net operating loss deduction (computed in accordance with section 122 of the Internal Revenue Code, as that section was constituted in 1942, and allowable as a deduction for the year 1942 under section 23(s) of the Internal Revenue Code).

3. The United States Court of Appeals for the Sixth Circuit erred in failing to find that the provisions of section 23(g) of the Internal Revenue Code, as that section was constituted in 1942, are applicable in determining whether a loss sustained in 1941 (on the worthlessness of stock in that year) may be included in the determination for the year 1942 of the amount of the net operating loss deduction (computed in accordance with section 122 of the Internal Revenue Code, as that section was constituted in 1942, and allowable as a deduction for the year 1942 under section 23(s) of the Internal Revenue Code).

4. The United States Court of Appeals for the Sixth Circuit erred in affirming the decision of The Tax Court of the United States wherein it ordered and decided that there are deficiencies in the petitioner's income tax and excess-profits tax in the respective amounts of $565,971.65 and $268,655.14 for the calendar year 1942.

5. The United States Court of Appeals for the Sixth Circuit erred in entering judgment for the respondent.

Summary of the Argument.

The petitioner sustained a loss of $1,551,902.79 in the year 1941 upon the worthlessness in that year of the stock of Reo Sales Corporation. The issue here in dispute in

volves the petitioner's income and excess-profits tax liability for the year 1942. The petitioner's tax liability for the year 1942 must be computed in accordance with the provisions of the Internal Revenue Code applicable to the year 1942. Under the provisions of section 23(g)(4) of the Internal Revenue Code, applicable to the year 1942, the loss on the worthlessness of the stock of Reo Sales Corporation was an ordinary, not a capital, loss. Such loss, therefore, is not to be eliminated in computing the amount of petitioner's net operating loss deduction for the year 1942 under section 122 of the Internal Revenue Code.

ARGUMENT.

There is no dispute over the fact that in the year 1941 the petitioner sustained a loss of $1,551,902.79 by reason of the worthlessness in that year of the stock of Reo Sales Corporation. Section 23(g) of the Internal Revenue Code, applicable to the year 1941, provided, so far as material here, that a loss resulting from the worthlessness of securities (including shares of stock in a corporation) should "be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets". Therefore, the loss sustained by the petitioner on the worthlessness of the Reo Sales Corporation stock was a long-term capital loss for the purpose of computing the petitioner's tax liability for the year 1941, and there is no disagreement between the parties on that point.

However, the petitioner's tax liability for the year 1941 is not in issue nor of any importance in determining the question presented. The question in controversy involves solely the petitioner's tax liability for the year 1942 and, specifically, whether in determining its tax liability for the

year 1942, the petitioner is entitled to a deduction under section 23(s) of the Internal Revenue Code which provides:

> "*Net Operating Loss Deduction.*—For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122."

Section 122 of the Internal Revenue Code is a complex section setting forth the manner in which the deduction allowed under section 23(s) shall be computed.[1] The computation of the net operating loss deduction involves the determination of net operating losses, net operating loss carry backs and carry-overs and, finally, the amount of the net operating loss deduction itself.

The starting point is whether there is an "excess of the deductions allowed by this chapter over the gross income". In the instant case, the taxpayer had for the year 1941 an excess of allowable deductions over its gross income, regardless of whether the provisions of the Internal Revenue Code, as they existed in 1941 or in 1942, are applied. As previously mentioned, the loss which the petitioner sustained on the worthlessness of the stock of Reo Sales Corporation was under the provisions of section 23(g) of the Internal Revenue Code as it existed in 1941, a long-term capital loss. Section 23(g) of the Internal Revenue Code was amended by section 123(a) of the Revenue Act of 1942 by adding thereto a new subparagraph (4) to exclude from

[1] Section 122 of the Internal Revenue Code was extensively amended by the Revenue Act of 1942. For the convenience of the Court, the provisions of section 122 as they appeared before amendment are set forth in Appendix A hereto, and as they appeared after amendment in Appendix B hereto.

the classification of capital assets stock in affiliated corporations.[2]

Regardless of which law is considered effective, the loss on the Reo Sales Corporation stock was an allowable deduction and the excess of the deductions allowed over the gross income would be identical in either case.[3]

This case, therefore, does not involve a situation where a loss or expenditure constituted an allowable deduction under the law applicable to one year but not under the law applicable to the other. Up to this point, therefore, there is no need to determine which law is applicable; the result will be identical in either case.

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[2] Section 23(g)(4) provides:

"(4) *Stock in Affiliated Corporation*—For the purposes of paragraph (2) stock in a corporation affiliated with the taxpayer shall not be deemed a capital asset. For the purposes of this paragraph a corporation shall be deemed to be affiliated with the taxpayer only if:

"(A) at least 95 per centum of each class of its stock is owned directly by the taxpayer; and

"(B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the company in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, or gains from sales or exchanges of stocks and securities; and

"(C) the taxpayer is a domestic corporation."

Facts have been stipulated showing that Reo Sales was affiliated with the taxpayer within the requirements of the foregoing section. (Stipulation, paragraphs First, Twelfth and Thirteenth, R. pp. 54, 56-57.)

[3] Under the law applicable to 1941, the full amount of the loss was allowable as a deduction without limitation in computing income for 1941 since it constituted a long-term capital loss (section 117(d) of the Internal Revenue Code as it existed in 1941).

The determination of an excess of deductions allowed over gross income is, however, only the starting point. Adjustment must be made for the "exceptions, additions and limitations provided in subsection (d)" of section 122 of the Internal Revenue Code.

Of the exceptions, additions and limitations provided in subsection (d) of section 122, the only one which could have any possible application is that appearing in subparagraph (4) of section 122(d). Section 122(d)(4) as it read prior to amendment by the Revenue Act of 1942 provided:

> "Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117(b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of the long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of short-term capital gains."

Section 150(e) of the Revenue Act of 1942 amended section 122(d)(4) to read as set forth below:

> "Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to section 117(b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains; * * * "

Section 101 of the Revenue Act of 1942 provides:

> "Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941."

Neither section 123(a) of the Revenue Act of 1942 which added subparagraph (4) to section 23(g) of the Internal

Revenue Code nor section 150(e) of the Revenue Act of 1942 amending section 122(d)(4) of the Internal Revenue Code contains any provisions with respect to the effective date thereof. Consequently, both sections were subject to section 101 of the Revenue Act of 1942, and by that section made "applicable only with respect to taxable years beginning after December 31, 1941".

The terms "long-term capital gains"; "long-term capital losses", "short-term capital losses", "short-term capital gains" and "gains and losses from sales or exchanges of capital assets" are given specific definitions in the Internal Revenue Code (sections 23(g) and 117). Consequently, when these words are used in the statute, they must be given the well defined meaning which Congress has assigned to them. By section 123(a) of the Revenue Act of 1942 amending section 23(g) of the Internal Revenue Code, Congress specifically provided that stock in an affiliated corporation (as there defined) shall not constitute a capital asset. ~~It is~~ inescapable therefore, we submit, that when in section 150 (e) of the same Revenue Act of 1942 (amending section 122 (d)(4) of the Code) Congress used the term "capital assets", it intended that that term did not include stock in an affiliated corporation. Where a term has once been defined, it is unnecessary to repeat that definition whenever such term is again used in the statute; the use of the term itself is equivalent to a repetition of the definition. Section 23 (g)(2) of the Internal Revenue Code, to which section 23 (g)(4) specifically relates, sets forth a rule "for the purposes of this chapter". Since section 122 of the Internal Revenue Code is a part of the same chapter, the definition in section 23(g)(4) necessarily applies to section 122(d)(4).

It is clear, therefore, we submit, that if in determining 1942 tax liability the exceptions, additions and limitations required to be made in determining the amount of the 1942

deduction must be computed in accordance with the provisions of the Internal Revenue Code specifically made applicable with respect to the year 1942, section 122(d)(4) of the Internal Revenue Code as it existed in 1942, and not as it existed in some prior year, must be applied. If section 122(d)(4) of the Internal Revenue Code, as it existed in 1942, is applied in this case, it will follow automatically that the deduction which the petitioner has claimed is proper and allowable.

In *Moore, Inc.* v. *Commissioner* (4 T. C. 404, aff'd 151 F. (2d) 527), the specific question involved was whether section 122(d)(4) of the Internal Revenue Code as it existed in 1942, or as it existed in 1941, was to be applied in computing the taxpayer's tax liability for the year 1942. Both The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit held that section 122(d)(4) of the Internal Revenue Code as it existed in 1942 was to be applied.

The Tax Court of the United States in its opinion in that case pointed out that the question before it was the tax liability of a taxpayer for the calendar year 1942 and said:

> "The answer to that question requires the use of a formula to compute the amount of the net operating loss for 1941. But the use of that formula has nothing to do with the tax liability for 1941. Its use here is limited to the determination of the tax liability of petitioner for the calendar year 1942."

The Tax Court of the United States was unquestionably correct in its observation that the use of a formula was required and that the formula had nothing to do with 1941 tax liability. A taxpayer may have a tremendous net loss in one year, but after going through the computations required under section 122 of the Internal Revenue Code to determine if he has a deduction in a subsequent year, may find

that he has no net operating loss or net operating loss deduction whatsoever. On the other hand, it seems possible that, under particular circumstances, a taxpayer may have a net taxable income for one year upon which he is required to pay a tax and still find that he has a net operating loss deduction in the succeeding year.[4]

The basis upon which The Tax Court of the United States decided the *Moore, Inc.* case is clearly set forth in its opinion as follows (4 T. C. 404, 406):

> "Section 101 of 'Title I—Individual and Corporation Income Taxes' of the Revenue Act of 1942 bears the subtitle 'Taxable Years to Which Amendments

[4] For example, assume that in 1942 an individual, who had no income in 1941, had gross business income of $5,000 and business deductions of $6,000, that he realized a profit of $10,000 on the sale of capital assets held for less than six months and that he also sustained a loss of $10,000 on the sale of capital assets held for more than six months. For the year 1942, the taxpayer had net *taxable* income of $4,000 upon which he was required to pay a tax. (The gain of $10,000 on the sale of capital assets held for less than six months is includible in income in full, but only 50% of the loss sustained on the sale of securities held for more than six months may be deducted. (Section 117(b) of the Internal Revenue Code.) The taxpayer thus would have a net gain of $5,000 to report on his security transactions. Deducting from this the net loss of $1,000 sustained in his business would leave the taxpayer with a net income of $4,000.) There were no changes in the law between 1942 and 1943 which could have any bearing upon the example given and, thus, in determining whether the taxpayer has a net operating loss carryover from 1942 to 1943, it is immaterial whether the 1942 or 1943 law is considered applicable. Under section 122(d)(4) of the Internal Revenue Code applicable to both years, gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 117(b) and the full amount of the profits and losses on the sale of securities would be taken into account in determining whether the taxpayer had a net operating loss in 1942. The $10,000 of losses would, thus, cancel out the $10,000 of gain, leaving a net loss of $1,000 from the operation of the business as a net operating loss for 1942, assuming that no further adjustments are required for percentage depletion, etc. Thus, the taxpayer, although having a net income for 1942, upon which he is required to pay a tax, may, nevertheless, be considered as having sustained a net operating loss in that year which may be carried forward as a deduction in computing 1943 income.

Applicable.' It reads: 'Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.'

"Section 150(e) of the Revenue Act of 1942, *supra*, amending subsection (d)(4) of section 122 of the Internal Revenue Code, contains no express provision as to the time that amendment is to become effective.

"Certainly, in its present context, 'with respect to' could mean nothing less than 'in computing a tax liability for.' Thus, paraphrasing section 101, *supra*, section 122(d)(4) of the Internal Revenue Code, as amended by section 150(e) of the Revenue Act of 1942, the provision would read 'shall be applicable * * * in computing a tax liability for taxable years beginning after December 31, 1941.' The question here is the tax liability of petitioner for such a year —the calendar year 1942. The answer to that question requires the use of a formula to compute the amount of the net operating loss for 1941. But the use of that formula has nothing to do with a tax liability for 1941. Its use here is limited to the determination of the tax liability of petitioner for the calendar year 1942.

"We conclude, therefore, that the 'net operating loss' of petitioner for 1941, to be used in the computation of its net operating loss carry-over to the calendar year 1942 for determining its net income and taxes for that latter year, shall be computed under section 122(d)(4) of the Internal Revenue Code, as amended by section 150(e) of the Revenue Act of 1942."

The identical reasoning was adopted in the opinion of the United States Court of Appeals for the Fifth Circuit in which it was said (151 F. (2d) 527, 528):

"And we are not left to conjecture as to when the amendment was to become effective, for the amend-

> ing Act, at the beginning of Part I, Title 1, which consists of amendments to the Revenue Code, declares in Sect. 101, 56 Stat. 802, 26 U. S. C. A. Int. Rev. Acts, 'Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.' There is no 'otherwise' provision. So this amendment applies with respect to taxable years beginning after December 31, 1941. It therefore applies with respect to the taxable year 1942. It is with respect to taxation for that year that the carry-over produced by a capital loss is here claimed as a deduction; and to ascertain what if anything is deductible by way of carry-over from 1941, we think, as did the Tax Court, that by the express words of the amended Section 122(d)(4), 'gains and losses from sales or exchanges of capital assets shall be taken into account' without any reference to what sort of result would have been figured out in 1941 under the then law. * * * "

In the instant case, the United States Court of Appeals for the Sixth Circuit has adopted a directly contrary view. It is stated in the opinion of that Court (170 F. (2d) 1001, 1004; R. p. 219) that the *Moore, Inc.* case involved section 122(d)(4) of the Internal Revenue Code, whereas here, we are concerned with section 23(g)(4). This statement overlooks completely the fact that the only issue in this case, as in the *Moore* case, is whether an adjustment is required under section 122(d)(4), and that when Congress in section 122(d)(4) used the term "capital assets" it was necessarily using that term as it is defined in sections 23(g)(4) and 117.

The Court below, in effect, concedes that if the provision in section 101 of the Revenue Act of 1942 that the amendments "shall be applicable only with respect to taxable years beginning after December 31, 1941" is interpreted as it was in the *Moore, Inc.* case to mean nothing less than

"in computing a tax liability for" taxable years beginning after December 31, 1941, the position of the petitioner here would be correct. The Court stated (R. p. 220):

> "* * * The argument might have some merit if the words of the statute are so changed, but we are not authorized to change them, and we believe there is a substantial difference between the phrase 'with respect to' as it stands in the statute and the phrase 'in computing a tax liability for' as urged by Petitioner. It is true that in the present case we are not computing a tax liability for 1941, but if we make the 1942 Amendment applicable to the transaction in 1941 we are making it applicable 'with respect to' a transaction in the taxable year 1941 contrary to the provisions of the amendment."

The Court, without attempting to offer any interpretation of the words "with respect to" in section 101 of the Revenue Act of 1942, has attempted to write into the statute a limitation to the effect that the amendment can have no application to an event occurring prior to the effective date thereof, regardless of whether the tax liability in question is for a period prior to, or subsequent to, such effective date, and regardless of the effect which such event may have "with respect to" the subsequent period. The fact is, however, that the statute does not refer to transactions occurring in any period. The statute directs itself *to* taxable *years*. There is nothing to indicate that Congress in any way had in mind *events* occurring *in* any particular period of time. We submit that when in a revenue statute Congress makes an amendment applicable "with respect to" a taxable year, the language, in the words of The Tax Court in the *Moore, Inc.* case, "could mean nothing less than 'in computing a tax liability for' ". It may be suggested that the words "with respect to" are not the same words as "in

computing a tax liability for" and that if Congress had intended the latter, it could have so stated. The fact is that the words "with respect to" are broad and general and more inclusive than the words "in computing a tax liability for". We suggest that Congress used the broad and general words deliberately but not as an indication of intent that the amendment should not be applicable in computing tax liability for the year to which the amendment was made applicable. The use of the words "in computing a tax liability for" alone would be inadequate. The provisions of the Internal Revenue Code are not directed solely to the computations of tax liability. The essential function of the Internal Revenue Code is to provide a method for the computation of tax liability, but the Code encompasses much more. For example, it provides methods for the payment and enforcement of the tax liability (sections 51-60, 141-151), for statutes of limitations upon the assessment and refund of taxes (sections 275-277, 322), penalties for evasion of the tax (section 145) and many other related matters. It would, therefore, be inaccurate for Congress to provide that the amendments contained therein shall be applicable only in the computation of the tax liability for a particular year when such amendments relate to matters other than the mere computation of tax liability.

For example, section 136 of the Revenue Act of 1942 amended section 51 of the Internal Revenue Code to remove the requirement that individual tax returns be filed under oath and substituted therefor a requirement that there be a written declaration that the return is made under the penalties of perjury. No specific provision was made for the effective date of this amendment and it was, therefore, by the terms of section 101 of the Revenue Act of 1942 made "applicable only with respect to taxable years beginning after December 31, 1941". That amendment had nothing

to do with the computation of tax liability as such. Other amendments, however, were of importance only in connection with the computation of tax liability, as for example, section 103 of the Revenue Act of 1942 amending section 12(b) of the Internal Revenue Code providing for the rates of surtax. We submit, therefore, that when Congress provides that amendments to the Internal Revenue Code "shall be applicable only with respect to taxable years beginning after" a particular date, Congress intends that the amendments shall be given the broadest possible application in connection with any matters affecting taxable years beginning after the date specified. Since some of the amendments are of importance only in connection with the computation of tax liability, the words "with respect to" must necesarily include the sense of "in computing a tax liability for"; although the words "with respect to" can, and should, be interpreted as encompassing more than a mere "in computing a tax liability for", such words cannot properly be given a meaning excluding "in the computation of tax liability for".

The Court below argues (R. p. 221) that if Congress had intended the result for which the petitioner contends "Congress could have given section 23(g)(4) retroactive application by expressly providing that it should be applicable to transactions in preceding years in cases where a tax liability was being computed for taxable years beginning after December 31, 1941, involving transactions in such prior years". Of course, Congress could have used the words suggested. Also, it could, instead of the broad and general words "with respect to", have used the specific words necessary to make it clear in exactly what sense the amendments effected by sections 102 and 103 of the Revenue Act of 1942 dealing with tax rates, section 136(a) dealing with the signing of returns, section 136(b) dealing with penalties

or any other section should be applicable "with respect to taxable years beginning after December 31, 1941". That Congress believed that the words suggested by the Court below were unnecessary and were included in the broad and general term is demonstrated by the Report of the Senate Finance Committee (Senate Report No. 1631, 77th Congress, Second Session) (discussed *infra*, p. 27).

The Court below suggests (R. p. 220) that the interpretation urged by the petitioner, and adopted by both The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit in the *Moore, Inc.* case, would make the 1942 amendment applicable "with respect to" a transaction in the taxable year 1941. The petitioner does not contend, and never has contended, that the 1942 amendment could in any way affect the manner or the extent to which the 1941 transaction was to affect its 1941 tax liability. The petitioner does contend, however, that the manner and the extent to which a transaction occurring in 1941 shall be reflected in its 1942 tax return and affect its tax liability for 1942 must be determined under the law specifically made applicable "with respect to" the taxable year 1942.

A familiar situation in which a transaction occurring in one taxable year affects the tax liability of a future taxable year is where a taxpayer sells property on the installment plan and in accordance with the provisions of section 44 of the Internal Revenue Code elects to report his profit on the installment basis. The sale may or may not have constituted the sale or exchange of a capital asset under the law applicable to the year of sale. However, the character of the income, whether capital gain or ordinary income, to be reported with respect to such sale in a subsequent year is governed by the law in effect during such subsequent year and not by the law in effect during the year of sale. (*Snell* v. *Com'r*, 97 F. (2d) 891; *Hay* v. *Com'r*,

25 B. T. A. 96; Example I of Section 29.117-7 of Regulations 111.) [5]

The Court below dismissed the argument based upon the *Snell* and *Hay* cases and Section 29.117-7 of Regulations 111 by the observation (R. p. 222) that "such subsequent installment payments are properly governed by the law of the year in which received. The Regulation deals with a situation entirely different from the one here involved". We submit that the two situations are not entirely different. In both cases, there is a transaction in one year which affects the tax liability of a subsequent year. In the one case, the taxpayer sells property at a profit which need not be included in full in income in the year of sale but may be deferred to a future period. In the other case, a loss is sustained which, with the other deductions allowable, exceeds the net income for the year of loss and the question is the carry-over of such loss to the succeeding year. If, in the one case, the character of the income to be included in the later year is to be determined by whether the law of the later year defines the property sold in the earlier year as a capital asset, why should not the character of the loss to be carried over to the later year likewise be determined by the law applicable to the later year? In each case, the transaction giving rise to the gain or loss occurred in the prior year and did, or did not, constitute a sale or exchange of a capital asset under the law applicable to such earlier year. However, in neither

[5] Section 151(b) of the Revenue Act of 1942 added subsection (j) to section 117 of the Internal Revenue Code and by section 101 of the Revenue Act of 1942 (the identical section applicable to the amendments to sections 122(d) and 23(g)(4) of the Code) the amendment was made "applicable only with respect to taxable years beginning after December 31, 1941". The example of the Regulations cited shows that in the case of a sale in 1941 (not resulting in a capital gain under the law applicable to that year) the profit to be reported in 1942 may be reported as a capital gain under section 117(j).

case are we concerned with the taxpayer's tax liability for the earlier year. We submit that in both cases the taxpayer's tax liability for the later year must be determined in accordance with the provisions of law made applicable "with respect to" the later year and not by what the law may have provided in the earlier period.

The correctness of the position contended for by the petitioner here and adopted by The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit in the *Moore, Inc.* case is demonstrated by the Report of the Senate Finance Committee on the Revenue Bill of 1942. The Senate Finance Committee proposed an amendment to the Revenue Bill of 1942 as passed by the House. Section 155 of the Senate Finance Committee Bill (section 153 of the Bill as finally enacted [6]) amended, among other things, section 122(b) of the Internal Revenue Code to provide for a different definition of a net operating loss carryover than had theretofore been contained in the Code. The amendments proposed by the Committee were expressly made applicable only to taxable years beginning after December 31, 1940. In its Report with respect to this amendment, the Senate Finance Committee stated (Senate Report No. 1631, 77th Congress, Second Session, p. 123; Cumulative Bulletin 1942-2, p. 596):

> "The net operating loss deduction for any taxable year is the sum of the carry-backs and the carry-overs to such taxable year. The amendments made by this section *are applicable to all taxable years beginning after December 31, 1940.* Thus, in the case of a taxpayer on the calendar year basis, *the carry-overs to the taxable year 1941 from the taxable years*

[6] Section 153 of the Revenue Act of 1942 as adopted is reproduced in Appendix C hereto.

> *1939 and 1940*, and the carry-backs to such taxable year from the taxable years 1942 and 1943 *will be determined under the amendments made by this section.*" (Italics supplied.)

Thus, there was a specific recognition by the Congressional Committee that the amendment although applicable only "to all taxable years beginning after December 31, 1940" would be effective in determining the carry-overs to the taxable year 1941 from the taxable years 1939 and 1940. The Court below (R. p. 221) completely misconceived the significance of this Report. Section 153 of the Revenue Act of 1942 did *not* merely add a provision permitting net operating loss carry-backs. Subsection (b) of that section did amend the prior law to permit carry-backs as well as carry-overs. However, subsection (a) of the section deals with the manner of computing the *amount* of a carry-back or carry-over. Under section 153(c) of the Revenue Act of 1942 amending section 122(e) of the Code, no carry-back is permitted to years prior to 1941. Accordingly, the amount of any carry-overs from 1939 and 1940 to 1941 could not in any way be influenced by carry-backs from subsequent years. It is obvious, therefore, that when the Committee referred to carry-overs from 1939 and 1940 to 1941 being determined under the amendments, it was *not* referring to the amendments effected by section 153(b) of the Revenue Act of 1942 providing for carry-backs.

As mentioned above, subsection (a) of section 153 of the Revenue Act of 1942 deals with the manner of computing the amount of carry-overs and carry-backs. Subsection (b) of section 122 of the Internal Revenue Code, as it previously existed, was amended by being subdivided into two subparagraphs, subparagraph (1) being concerned with net operating loss carry-backs and subparagraph (2) being concerned with net operating loss carry-overs. In this con-

nection, the Senate Finance Committee (Senate Report No. 1631, 77th Congress, Second Session, p. 122; Cumulative Bulletin 1942-2, p. 596) said:

> "The *amount* which may be carried back or carried forward is limited in the case of each such preceding or succeeding year to the amount which was not used to offset income for any taxable years before such preceding or succeeding year. In determining the *amount* of the net operating loss which is so used to offset income in any taxable year, the net income for such taxable year is computed without the deduction of any carry-over or carry-back from the year in which the net operating loss arose or from any year subsequent thereto *but with certain other adjustments now required under section 122(d)*. The net operating loss which is a carry-over or a carry-back to such taxable year is considered to have been applied against the net income so computed." (Italics supplied.)

As stated by the Senate Finance Committee, the amount of a net loss must be reduced by the amount of the net income of an intervening year "but with certain other adjustments now required under section 122(d)". Obviously, the Committee was referring to that part of section 122(b)(2), as amended by section 153(a) of the Revenue Act of 1942, providing that the amount of a net operating loss should be reduced by the amount of the income of the intervening taxable year computed "with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6)".

A comparison of section 122(b) before and after amendment (see Appendices A and B) shows that the amended section requires an adjustment under section 122(d)(6), whereas, no such adjustment was required before amendment.

The Senate Finance Committee did not state merely that in computing income for a year beginning after December 31, 1940 the net loss deduction would be the sum of carry-backs and carry-overs. It went on to say that such carry-backs and carry-overs "will be determined under the amendments made by this section" specifically stating that any carry-overs to the taxable year 1941 from the taxable years 1939 and 1940 would be determined under the amendment.

When in section 153 of the Revenue Act of 1942 Congress amended the method of computing net loss carry-overs and provided that the amendments effected by that section would be applicable only to taxable years beginning after December 31, 1940 and the Senate Finance Committee specifically stated that the carry-overs to the taxable year 1941 from the taxable years 1939 and 1940 would be determined under the amendments, there was a clear recognition that making the amendments applicable to the year 1941 was making the amendments applicable in the computation of tax liability for the year 1941.

Further, the position taken by the Senate Finance Committee is diametrically opposed to the position upon which the respondent has built the foundation for his entire argument. The basic premise upon which the respondent has argued this case is that the amount of the net operating loss is determined by reference to the law applicable to the year of loss, the net operating loss carry-over by reference to the law applicable to the intervening year and only the net operating loss deduction itself by the law applicable to the year of deduction. Thus, the effect of respondent's argument is that in determining whether a taxpayer is entitled to take a net operating loss deduction in 1941 by reason of a net loss in 1939, the net operating loss is to be computed under the law applicable to 1939, the net operat-

ing loss carry-over under the law applicable to 1940 and only the adjustments thereto to determine a net operating loss deduction under the law applicable to 1941. Yet, the Senate Finance Committee stated that such was not the case. It stated that the net operating loss carry-over was to be determined by an amendment applicable only to 1941 and subsequent years, that is, that the law applicable to 1941, and not the law applicable to 1940, was to govern the determination of the net operating loss carry-over. Thus, the foundation itself for the respondent's argument is removed.

The concept of the allowance of a deduction for the losses of one year from the gross income of another first appeared in the Revenue Act of 1924. These provisions of the Revenue Act of 1924 were reenacted in the Revenue Acts of 1926, 1928 and 1932. As set forth in the Revenue Act of 1932, the provisions were repealed as of January 1, 1933 by section 218(a) of the National Industrial Recovery Act (June 16, 1933). As pointed out in the opinion of The Tax Court in the *Moore, Inc.* case, each one of these revenue acts contained a provision to the effect that the net loss to be carried forward from one year to a succeeding taxable year was to be computed under the law applicable to the earlier year.

When, after a lapse of six years, Congress reinstituted the principle of the carry-over of a net loss as a deduction in a subsequent year, the Internal Revenue Code was amended by section 211(b) of the Act of June 29, 1939 by the additions of section 23(s) and 122. It is apparent that the language of the prior revenue acts was borrowed liberally in section 122. However, the provisions of the prior acts to the effect that the law applicable to the prior year was to be applied in determining the amount of the net loss to be carried forward were omitted. This omission was taken by The Tax Court in its opinion in the *Moore* case

as an indication that Congress did not intend to have the law of the prior year apply, a position supported by the familiar principle that some significance must be attached to the omission of words in the reenactment of a statute. As was said in *Pirie* v. *Chicago Title & Trust Co.* (182 U. S. 438, 448):

> "The words in italics are omitted from the act of 1898. Was the omission without purpose? The omission of a condition is certainly not the same thing as the expression of a condition. Was it left out in words to be put back by construction? Taken from the certainty given by prior use and prior decisions, and committed to doubt and controversy? There is a presumption against it. When the purpose of a prior law is continued, usually its words are, and an omission of the words implies an omission of the purpose. This rule we lately applied in *Bardes* v. *First Nat. Bank*, 178 U. S. 524, 44 L. ed. 1175, 20 Sup. Ct. Rep. 1000. In that case, in determining whether the jurisdiction of the circuit and district courts of the United States was concurrent with the state courts in certain suits at law and equity between the assignee in bankruptcy and the adverse claimant of property of the bankrupt, the statutes of 1841 and 1867 were compared with that of 1898, and from the omission from the latter of certain provisions of the former statutes it was decided that such jurisdiction did not exist. It was said by the court, speaking by Mr. Justice GRAY: 'We find it impossible to infer that when Congress, in framing the act of 1898, entirely omitted any similar provision, and substituted the restricted provisions of § 23, it intended that either of those courts should retain the jurisdiction which it had under the obsolete provision of the earlier acts.'"

The fact that Congress in other provisions of the Internal Revenue Code has made it clear when the provisions

of prior law are to control is an indication that Congress had no such intention in the present case. For example, section 113(a)(3) of the Internal Revenue Code provides:

> "The basis of property shall be the cost of such property; except that—
>
> • • • • • • •
>
> (3) Transfer In Trust After December 31, 1920.—If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise) the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer *under the law applicable to the year in which the transfer was made.*" (Italics supplied.)

Language similar to the italicized portion of section 113 (a)(3) as quoted above will be found in subsections (a)(5), (6), (7), (8), (9) and (13) of section 113 of the Internal Revenue Code.

Certainly, there is no basis of principle for determining that the amount to be allowed as a net operating loss deduction in one year shall be determined by reference to the law of a prior year. The history of the various revenue acts and of the Internal Revenue Code itself is obviously an evolution based upon experience. From time to time, experience has shown that, for example, a deduction theretofore allowed in the computation of gross income should not be allowed, or that a deduction not theretofore allowed should be allowed. Experience has further shown from time to time that a change previously made was too sweeping in its application, and an exception should be made. When these things have become apparent, Congress has amended the law to correct the previous error. Although, as a matter of principle, these amendments should perhaps

be made retroactive, that would involve the reopening of tax liabilities previously considered as settled and cause great inconvenience and confusion to both the Treasury and taxpayers. Consequently, such amendments are ordinarily made applicable only with respect to taxable years in which the change is made and subsequent years.

Originally, a capital gain or loss occurred only upon the sale or exchange of a capital asset.[7] Thus, if a taxpayer sold a security for $1.00 for which he had paid $100, his loss of $99 constituted a capital loss. However, if he did not sell the security, but it became worthless, his loss then was not a capital loss but an ordinary loss. By section 23(g) of the Revenue Act of 1938 (Public Law No. 554, 75th Congress, 3d Session), the law was amended to provide that the loss sustained upon the worthlessness of shares of stock should be considered as a capital loss. This was later considered to be too sweeping a change, and in recognition of the fact that a loss sustained on the worthlessness of the stock of an affiliated company was in the nature of a business rather than an investment loss, the law was again

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[7] In the Report of the House Committee on Ways and Means on the Revenue Bill of 1938 (Report No. 1860, 75th Congress, 3d Session) it was said (p. 18):

"Under section 23(e) of the Revenue Act of 1936 a loss sustained from securities becoming worthless which is deductible under that subsection is deductible in full and against ordinary income. In contrast thereto a loss sustained from the sale or exchange of such securities as are capital assets is not only subject to reduction by the percentage brackets of section 117(a) of that act but cannot be offset against ordinary income except to the extent of $2,000. This distinction in treatment is not satisfactory, since, in either case, the loss sustained by the taxpayer is a loss of capital and consequently should be treated similarly for tax purposes. This difference in treatment is eliminated by the bill. Section 23(g) thereof, dealing with capital losses, subjects losses arising from stock or stock rights becoming worthless to the same limitations provided under section 117 of the bill with respect to sales or exchanges."

amended by the 1942 Act by the addition of subsection (4) of section 23(g). Thus, in 1942, Congress recognized that the loss on the worthlessness of the stock of an affiliated company should not be treated as a capital loss and subject to the various limitations placed thereon.

Since the amendment was made effective with respect to taxable years beginning after December 31, 1941, and we are here concerned with the taxpayer's tax liability for the year 1942, we submit that, as a matter of principle, the taxpayer's tax liability for 1942 should be computed in the manner in which Congress then deemed that losses occasioned by the worthlessness of the stock of an affiliated company should be treated. To adopt the respondent's position would be to perpetuate and to carry over into 1942 a concept of the nature of a loss sustained on the worthlessness of the stock of an affiliate, which Congress found, by the amendment to section 23(g)(4), was no longer appropriate.

The Court below (R. p. 221) stated that "Under petitioner's construction of section 101 the net operating loss in any given year would not be a fixed quantity but with changes in the taxing act would vary from year to year." No reason is given why a net operating loss should be a static amount and we submit there is none. The fact that a taxpayer may have a net operating loss in 1941 under the law applicable to 1941 does not guarantee to the taxpayer the allowance of that net operating loss as a deduction in 1942. Congress may, in the law applicable to 1942, completely deny any deduction therefor, or may provide that the deduction shall be in an amount quite different than that computed under the prior law. What Congress considers in 1942 to be the proper amount is the amount to be allowed as a deduction in computing 1942 tax liability and not what may have been considered the proper amount

in 1941. Further, we submit that no considerations of administrative difficulty require that a net operating loss be a static amount. Section 122 of the Internal Revenue Code is a complex section but, we submit, the difficulties inherent in the application of that section would not be increased whether the petitioner's or the respondent's theory is sustained. It is perhaps possible to conjecture a theoretical set of facts, very unlikely to happen, under which there might be some administrative inconveniences. Certainly, however, no administrative difficulty is involved in this case, in the *Moore, Inc.* case or in any case reasonably likely to happen. We submit that the basis of reason and principle should not be discarded because of the remote possibility that in a few possible but unlikely cases there may be some slight measure of administrative inconvenience. Further, whatever administrative inconvenience might be found in some unlikely case under the petitioner's theory would be matched under the respondent's theory by the inconvenience that in some equally remote situation it would be necessary to apply the laws applicable to five different taxable years to the determination of the tax liability for a single year.

Conclusion.

It is, therefore, respectfully submitted that the Petition for Writ of Certiorari should be granted as prayed for.

Respectfully submitted,

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner.

Appendix A.

Section 122 of the Internal Revenue Code as it Read Prior to Amendment by the Revenue Act of 1942.

Sec. 122. Net operating loss deduction.

Sec. 122(a). Definition of net operating loss.—As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).

Sec. 122(b). Amount of carry-over.—The term "net operating loss carry-over" means in the case of any taxable year the sum of:

Sec. 122(b)(1). The amount, if any, of the net operating loss for the first preceding taxable year; and

Sec. 122(b)(2). The amount of the net operating loss, if any, for the second preceding taxable year reduced by the excess, if any, of the net income (computed with the exceptions and limitations provided in subsection (d)(1), (2), (3), and (4) for the first preceding taxable year over the net operating loss for the third preceding taxable year.

Sec. 122(c). Amount of net operating loss deduction.—The amount of the net operating loss deduction shall be the amount of the net operating loss carry-over reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal-tax net income (computed without such deduction);

Sec. 122(d). Exceptions and limitations.—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

Sec. 122(d)(1). The deduction for depletion shall not exceed the amount which would be allowable if computed

without reference to discovery value or to percentage depletion under section 114(b)(2), (3), or (4);

Sec. 122(d)(2). There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23(b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations;

Sec. 122(d)(3). No net operating loss deduction shall be allowed;

Sec. 122(d)(4). Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117(b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of the long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of the short-term capital gains;

Sec. 122(d)(5). Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions and limitations specified in paragraphs (1) to (4) of this subsection.

Sec. 122(e). No carry-over from year prior to 1939. As used in this section, the terms "third preceding taxable year", "second preceding taxable year", and "first preceding taxable year" do not include any taxable year beginning prior to January 1, 1939.

Appendix B.

Section 122 of the Internal Revenue Code as it Read After Amendment by the Revenue Act of 1942.

Sec. 122. Net operating loss deduction.

Sec. 122(a). Definition of net operating loss.—As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions and limitations provided in subsection (d).

Sec. 122(b). Amount of carry-back and carry-over.—

Sec. 122(b)(1). Net operating loss carry-back.—If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

Sec. 122(b)(2). Net operating loss carry-over.—If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without regard to such net

operating loss and without regard to any net operating loss carry-back. For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1941 shall be reduced by the sum of the net income for each of the two preceding taxable years (computed for each such preceding taxable year with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6), and computed by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year).

Sec. 122(c). Amount of net operating loss deduction.— The amount of the net operating loss deduction shall be the aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d)(1), (2), (3), and (4) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction) or in the case of a corporation, the normal-tax net income (computed without such deduction and without the credit provided in section 26(e));

Sec. 122(d). Exceptions, additions and limitations.— The exceptions, additions, and limitations referred to in subsections (a), (b), and (c) shall be as follows:

Sec. 122(d)(1). The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114(b)(2), (3), or (4);

Sec. 122(d)(2). There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23(b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations;

Sec. 122(d)(3). No net operating loss deduction shall be allowed;

Sec. 122(d)(4). Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 117(b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains;

Sec. 122(d)(5). Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions, additions, and limitations specified in paragraphs (1) to (4) of this subsection.

Sec. 122(d)(6). There shall be allowed as a deduction the amount of tax imposed by Subchapter E of Chapter 2 paid or accrued within the taxable year, subject to the following rules—

(A) No reduction in such tax shall be made by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

(B) Such tax shall be computed without regard to the adjustments provided in section 734; and

(C) Such tax, in the case of a consolidated return for excess-profits tax purposes, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary.

Sec. 122(e). No carry-back to year prior to 1941.—As used in this section, the term "preceding taxable year" and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941.

Appendix C.

Section 153 of the Revenue Act of 1942

Sec. 153. Two-Year Carry-Back of Net Operating Losses.

(a) *Determination of Carry-Back.*—Section 122(b) (relating to the amount of the net operating loss carry-over), is amended to read as follows:

"(b) *Amount of Carry-Back and Carry-Over.*—

"(1) *Net Operating Loss Carry-Back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

"(2) *Net Operating Loss Carry-Over.*—If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without

regard to such net operating loss and without regard to any net operating loss carry-back. For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1941 shall be reduced by the sum of the net income for each of the two preceding taxable years (computed for each such preceding taxable year with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and computed by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year)."

(b) *Amount of Net Operating Loss Deduction.*—Section 122(c), relating to the amount of the net operating loss deduction, is amended by inserting in lieu of "amount of the net operating loss carry-over" the following: "aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year".

(c) Section 122(e) is amended to read as follows:

"(e) *No Carry-Back to Year Prior to 1941.*—As used in this section, the term 'preceding taxable year' and the term 'preceding taxable years' do not include any taxable year beginning prior to January 1, 1941."

(d) *Limitation on Interest on Overpayment Caused by a Carry-Back of Loss or Credit.*—Section 3771 (relating to interest on overpayments) is amended by inserting at the end thereof the following:

"(e) *Claims Based on Carry-Back of Loss or Credit.*—If the Commissioner determines that any part of an overpayment is attributable to the inclusion in computing the net operating loss deduction for the taxable year of any part of the net operating loss for a succeeding taxable year or to the inclusion in computing the unused excess profits credit adjust-

ment for the taxable year of any part of the unused excess profits credit for a succeeding taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period before the filing of a claim for credit or refund of such part of the overpayment or the filing of a petition with the Board, whichever is earlier."

(e) *Effective Date.*—The amendments made by this section shall be applicable only to taxable years beginning after December 31, 1940.

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IN THE

Supreme Court of the United States

October Term, 1949

No. 59

REO MOTORS, INC.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONER.

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner,
Investment Building,
Washington 5, D. C.

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IN THE

Supreme Court of the United States

October Term, 1949

No. 59

REO MOTORS, INC.,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONER.

This cause is before this Court for the review on writ of certiorari of a judgment of the United States Court of Appeals for the Sixth Circuit.

The Opinions Delivered in the Courts Below.

The official report of the opinion delivered in the United States Court of Appeals for the Sixth Circuit is reported in 170 F. (2d) 1001.

The official report of the opinion of The Tax Court of the United States is reported in 9 T. C. 314.

The Jurisdiction of this Court.

This Court has jurisdiction to review a judgment of a Court of Appeals by a writ of certiorari granted upon the petition of any party.[1]

[1] Title 28, U. S. Code, Sec. 1254; Sec. 1254, Public Law 773, 80th Congress, Chap. 646, 2nd Session. See page 57 of this brief.

On November 29, 1948 the United States Court of Appeals for the Sixth Circuit ordered and adjudged that the decision of The Tax Court of the United States be affirmed (R. 216). Thereafter petitioner filed a petition for rehearing with said United States Court of Appeals for the Sixth Circuit, and on February 1, 1949 the said Court ordered that said petition for rehearing be overruled (R. 235). On April 25, 1949 petitioner filed in this Court a petition for a writ of certiorari, which petition was granted by this Court on June 6, 1949 (R. 235).

Statement of the Case.

Petitioner, a domestic corporation (Par. First, Stipulation of Facts, R. 54; found as fact, R. 192), in 1941, suffered a loss of $1,551,902.79 (Pars. Twelfth, Fourteenth, Fifteenth, R. 57, 58; found as fact, R. 192) Said loss was allowed in full as a deduction from gross income in determining net income for the taxable year ended December 31, 1941, by Chapter 1 of the Internal Revenue Code (Title 26, United States Code) (R. 193).

In addition to said loss of $1,551,902.79, petitioner in 1941, had other deductions allowed by Chapter 1 of the Internal Revenue Code (Title 26, United States Code) in the amount of $2,215,727.08 (Par. Seventeenth, Stipulation of Facts, R. 58; found as fact, R. 192). Petitioner thus, for 1941, had total deductions allowable by Chapter 1 of the Internal Revenue Code (Title 26, United States Code) of $3,767,629.87.

For 1941, the petitioner had gross income of $2,573,259.89 (Par. Twenty-second, Stipulation of Facts, R. 59; found as fact, R. 192). Petitioner thus, for 1941,[2] had "an excess

[2] The matter in quotation marks is from section 122(a) of the Internal Revenue Code (Title 26, United States Code). See pages 3-4 herein.

of the deductions allowed by * * * Chapter" 1 of the Internal Revenue Code (Title 26, United States Code) "over the gross income" in the amount of $1,194,369.98.

In its income and excess profits tax returns for the taxable year ended December 31, 1942, petitioner claimed as a deduction from its 1942 gross income, pursuant to section 23(s) of the Internal Revenue Code (Title 26, United States Code) (see p. 39), a net operating loss deduction. This claim was made upon the theory that the excess ($1,194,369.98) of 1941 deductions over 1941 gross income was a "net operating loss" within the meaning of section 122(a) of the Internal Revenue Code (Title 26, United States Code) (see pp. 3-4); which resulted in a net operating loss carry-over from 1941 to 1942 under section 122(b) of the Internal Revenue Code (Title 26, United States Code) (see p. 49); and which in turn resulted in a net operating loss deduction within the meaning of section 122(c) of the Internal Revenue Code (Title 26, United States Code) (see p. 50).

The respondent, on the audit of petitioner's income and excess profits tax returns for 1942, disallowed said claim to a net operating loss deduction (Par. Twenty-ninth, Stipulation of Facts, R. 60; found as fact, R. 192). On successive appeals by the petitioner, the respondent was sustained by The Tax Court of the United States (R. 191-201) and by the United States Court of Appeals for the Sixth Circuit (R. 216-223).

Section 122(a) of the Internal Revenue Code (Title 26, United States Code) provides in part:[3]

> *Definition of Net Operating Loss.*—As used in this section, the term "net operating loss" means the ex-

[3] For the convenience of the Court, the full text of section 122(a) is set forth in the Appendix at page 48.

> cess of the deductions allowed by this chapter[4] over the gross income, *with the exceptions, * * * and limitations provided in subsection (d).*[5]

The action of the respondent in disallowing said net operating loss deduction for 1942, and of The Tax Court of the United States and the United States Court of Appeals for the Sixth Circuit in sustaining the respondent, was on the theory that, even though, as we have seen, there was, for 1941, an "excess of the deductions allowed by * * * Chapter" 1 of the Internal Revenue Code (Title 26, United States Code) "over the gross income" in the amount of $1,194,369.98, "the exceptions * * * and limitations provided in subsection (d)" (4) of section 122 of the Internal Revenue Code (Title 26, United States Code) eliminated that excess and thereby eliminated the "net operating loss".

Section 122(d) of the Internal Revenue Code (Title 26, United States Code) as amended by section 105(e) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session), and as that section applied to the taxable year 1942 so far as pertinent[6] provides:

> *Exceptions * * * and Limitations.*—The exceptions, * * *, and limitations referred to in subsection * * * (a) * * * shall be as follows:
>
> * * *
>
> (4) Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 117(b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains.

---

[4] Chapter 1 of the Internal Revenue Code (Title 26, United States Code).

[5] Italics supplied.

[6] For the convenience of the Court, the full text of section 122(d) as amended by section 105(e) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session) is set forth in the Appendix at page 52.

The first sentence of paragraph (4) of section 122(d) of the Internal Revenue Code (Title 26, United States Code) is of no significance here, since "section 117(b)" is not applicable to corporations (see p. 46). In the case of corporate taxpayers, "gains and losses from sales or exchanges of capital assets" are "taken into account" at one hundred per centum of such gains or losses in any event.

The second sentence of section 122(d)(4), however, is the entire cause of the controversy which we are now presenting to this Court for review, by reason of the following facts:

The loss of $1,551,902.79, described in the first paragraph of this statement of the case, was a long term capital loss under the law applicable to the taxable year ended December 31, 1941 (Par. Sixteenth, Stipulation of Facts, R. 58; found as fact, R. 192). Petitioner realized no capital gains in the taxable year ended December 31, 1941 (Par. Twenty-second, Stipulation of Facts, R. 59; found as fact, R. 192).

Therefore, if the law applicable to the taxable year ended December 31, 1941 governs in determining whether the loss of $1,551,902.79 sustained by the petitioner in 1941 was a loss "from the sale or exchange of capital assets" *within the meaning of section 122(d)(4)* of the Internal Revenue Code (Title 26, United States Code), there was an excess of "losses from sales or exchanges of capital assets" over "the amount includible on account of * * * gains" "from sales or exchanges of capital assets" (section 122(d)(4); see p. 4); there was no "excess of the deductions allowed * * * with the exceptions * * * and limitations provided in subsection (d)" "over gross income" (section 122(a); see pp. 3-4); there was no "net operating loss"; there was no net operating loss carry-over; there was no

net operating loss deduction; in short, the respondent must prevail.

On the other hand, as will be demonstrated in Point I of this brief, the loss of $1,551,902.79, described in the first paragraph of this statement of the case, was not a loss from the sale or exchange of capital assets under the law applicable to the taxable year 1942.

Therefore, if the law applicable to the taxable year 1942 governs in determining whether the loss of $1,551,902.79 sustained by the petitioner in 1941 was a "loss from the sale or exchange of capital assets" *within the meaning of section 122(d)(4)* of the Internal Revenue Code (Title 26, United States Code), section 122(d)(4) has no application; there was an "excess of the deductions allowed * * * over the gross income" (section 122(a); see pp. 3-4) amounting to $1,194,369.98; there was a "net operating loss" of $1,194,369.98; there was a net operating loss carry-over; there was a net operating loss deduction; in short, the petitioner must prevail.

A Specification of Such of the Assigned Errors As Are Intended to Be Urged.

It is intended that each of the errors assigned on pages 11 and 12 of petitioner's petition herein for writ of certiorari and brief in support thereof will be urged.

Summary of the Argument.

The loss of $1,551,902.[illegible] suffered by the petitioner in 1941 was not a loss from the sale or exchange of capital assets under the law applicable to the taxable year 1942.

Petitioner and Reo Sales Corporation were affiliated, and therefore the worthlessness of the stock of the latter was an ordinary loss.

The law applicable to the taxable year 1942 governs in determining whether the loss sustained by the petitioner in 1941 was a "loss from the sale of capital assets" within the meaning of section 122(d)(4) of the Internal Revenue Code (Title 26, United States Code). The governing law is to be determined in accordance with the intention of Congress. That Congress so intended is indicated by: (1) Congress must have intended to give the same meaning to the term "capital asset" in sections 123(a) and 150(e) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session). (2) If the law applicable to 1942 does not govern, then Congress is in the position of having used the term "capital assets" in section 122(d)(4) with one meaning for the purposes of section 122(a), another meaning for the purposes of section 122(b), and still another meaning for the purposes of section 122(c). (3) The 1942 law governs in determining whether a loss shall be eliminated in determining 1942 tax liability. (4) Congress has, in every instance in which it has been its will that a factor entering into the determination of tax liability (when such factor depends upon events occurring outside the taxable year) should be interpreted in accordance with the law applicable to the year of the event rather than to the year of tax liability, specifically so provided; it has not done so here. (5) The report of the Senate Finance Committee on the Revenue Bill of 1942 indicates that it was the intention of Congress that the law applicable to 1942 should govern.

The Court below erred in its conclusions based upon the effective date of the amendment by which paragraph (4) was added to section 23(g) of the Internal Revenue Code.

THE ARGUMENT.

I.

The loss of $1,551,902.79, suffered by the petitioner in 1941, was not a loss from the sale or exchange of capital assets under the law applicable to the taxable year 1942.

It was stipulated by the parties that the loss of $1,551,902.79 was "a long term capital loss under the law applicable to the taxable year ended December 31, 1941" (R. 58).

Section 117(a)(5) of the Internal Revenue Code (Title 26, United States Code), as that section applied to the taxable year 1941, reads, so far as pertinent,[7] as follows:

> *Definitions.*—As used in this chapter[8]
>
> * * *
>
> (5) *Long Term Capital Loss.*—The term "long term capital loss" means loss from the sale or exchange of a capital asset.
>
> * * *

While the loss arose *with respect to* a "capital asset", within the meaning of section 117(a)(1) of the Internal Revenue Code (Title 26, United States Code) (see p. 45), as that section applied to the taxable year 1941, it did not result from a "sale or exchange". It resulted, on the contrary, from the worthlessness of stock (Pars. Fourteenth, Fifteenth and Eighteenth, Stipulation of Facts, R. 58; found as fact, R. 192; see first sentence of opinion of Judge HILL in The Tax Court of The United States, R. 195).

---

[7] For the convenience of the Court the full text of section 117(a)(5), as that section applied to the taxable year 1941, is set forth in the Appendix at page 45.

[8] Chapter 1 of the Internal Revenue Code (Title 26, United States Code).

The stipulated fact, therefore, was not based on section 117 of the Internal Revenue Code (Title 26, United States Code). It was based on section 23(g)(2) of the Internal Revenue Code (Title 26, United States Code), as that section applied to the taxable year 1941:

> (g) *Capital losses.*—
>
> • • •
>
> (2) *Securities becoming worthless.*—If any securities (as defined in paragraph (3) of this subsection) become worthless during the taxable year and are capital assets, the loss resulting therefrom shall, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.
>
> (3) *Definition of securities.*—As used in this subsection the term "securities" means (A) shares of stock in a corporation, and (B) rights to subscribe for or to receive such shares.

Section 123(a)(1) of the Revenue Act of 1942 (Public Act No. 753, 77th Congress, 2nd Session) amended section 23(g) of the Internal Revenue Code (Title 26, United States Code) by adding thereto a new paragraph (4), as follows:

> (4) *Stock in affiliated corporation.*— For the purposes of paragraph (2) stock in a corporation affiliated with the taxpayer shall not be deemed a capital asset. For the purposes of this paragraph a corporation shall be deemed to be affiliated with the taxpayer only if:
>
> (A) at least 95 per centum of each class of its stock is owned directly by the taxpayer; and
>
> (B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been

from sources other than royalties, rents, dividends, interest, annuities, or gains from sales or exchanges of stocks and securities; and

(C) the taxpayer is a domestic corporation.

Section 101 of the Revenue Act of 1942 (Public Law No. 773, 77th Congress, 2nd Session) (see pp. 14-15) made the addition of paragraph (4) to section 23(g) effective with respect to taxable years beginning after December 31, 1941.

Since all (not merely 95 per centum of each class) of the stock which became worthless was owned directly by the petitioner (Par. Twelfth, Stipulation of Facts, R. 57; found as fact, R. 192); since more than 90 per centum of the gross income for all taxable years of Reo Sales Corporation (the corporation whose stock became worthless), was from sources other than royalties, rents, dividends, interest, annuities, or gains from sales of stock and securities (Par. Thirteenth, Stipulation of Facts, R. 57; found as fact, R. 192); and since the petitioner is a domestic corporation (Par. First, Stipulation of Facts, R. 54; found as fact, R. 192), petitioner and said Reo Sales Corporation were affiliated.

And since petitioner and said Reo Sales Corporation were affiliated, the loss of $1,551,902.79 suffered by the petitioner in 1941, was not a loss from the sale or exchange of capital assets under the law applicable to the taxable year 1942.

II.

The law applicable to the taxable year 1942 governs in determining whether the loss sustained by the petitioner in 1941 was a "loss from the sale or exchange of capital assets" within the meaning of section 122(d)(4) of the Internal Revenue Code (Title 26, United States Code).

A. The governing law is to be determined in accordance with the intention of Congress.

We will not trouble to cite cases in support of this proposition. All the law with respect to the income tax and excess profits tax is the creature of Congress. We anticipate no attempt to rebut the principle that the governing law is to be determined in accordance with the intention of the legislature.

B. The intention of Congress is indicated by the fact that in both section 123(a) and section 150(e) of the Revenue Act of 1942 Congress used the term "capital assets"; unless it intended the law applicable to 1942 to govern, the term means one thing in section 123(a) and an utterly different thing in section 150(e).

We have heretofore pointed out (p. 9) that section 123(a) of the Revenue Act of 1942 (Public Act No. 753, 77th Congress, 2nd Session) added paragraph (4) to section 23(g) of the Internal Revenue Code *with respect to taxable years beginning after December 31, 1941.* Said paragraph (4) provided that the stock of an affiliated corporation, which had become worthless, should not be "*for the purposes of this chapter*" (*i. e.*, Chapter 1 of the Internal Revenue Code (Title 26, United States Code)) a "*capital asset*". (See section 23(g)(2), page 9.)

By the same Revenue Act of 1942, in section 150(e), section 122(d)(4) was amended, for the taxable years beginning after December 31, 1941, to refer to gains and losses from sales or exchanges of "*capital assets*".

If the decision of the Court below is correct, Congress in section 123(a) of the Revenue Act of 1942 meant to define "*capital assets*" so as to *exclude* the worthless stock of an affiliated corporation; and at the same time *and for the same taxable year* meant in section 150(e) of the same statute to define "*capital assets*" to *include* the worthless stock of an affiliated corporation.

We submit that it is inconceivable that Congress should have thus used the *same term, in the same statute, and with respect to the same period*, with such opposite meanings.

C. If the law applicable to 1942 does not govern, then the term "loss from the sale of capital assets" in section 122(d)(4) may have one meaning for the purposes of section 122(a), another meaning for the purposes of section 122(b), and still a third meaning for the purposes of section 122(c).

On the theory upon which this case was decided in the courts below, a net operating loss is governed by the law applicable to the year in which the loss occurred; the net income of "a second preceding taxable year" (in the case of a net operating-loss carry-back; section 122(b)(1)) is to be determined by the law applicable to such second preceding taxable year; the net income for any "intervening taxable year" and the net income for "the two years preceding the taxable year" is to be determined by law applicable to such "intervening taxable year" and such "two preceding taxable years" (section 122(b)(2)); and the net income of the taxable year is to be determined by the law applicable to the taxable year (section 122(c)); the governing law in each of these cases might well define a capital asset in a different way.

We submit that it is inconceivable that Congress intended, in enacting section 122(d)(4) that so many different meanings should or might be given to the single phrase "gains and losses from the sale or exchange of capital assets".

D. The loss which the petitioner sustained in 1941 was allowable in full under the laws applicable to both 1941 and 1942 and the 1942 law must apply in determining whether such allowable loss shall be eliminated in determining a 1942 net loss deduction.

The loss which the petitioner sustained in the year 1941 on the worthlessness of the stock of Reo Sales Corporation was allowable in full and without limitation in the computation of its net income for 1941 under the provisions of the Internal Revenue Code applicable to that year. Similarly, if such loss had occurred in the year 1942, the loss would have been deductible in full and without limitation in the computation of petitioner's tax liability for the year 1942 under the provisions of the Internal Revenue Code applicable to the year 1942. This is, therefore, *not* a case involving a deduction allowable under the law applicable to one year but not allowable under the law applicable to the other year. This case, hence, does not involve the issue as to whether a deduction not allowable under the 1941 law, but allowable under the law applicable to 1942, may be included in determining the net operating loss deduction for 1942; or whether a deduction allowable under the 1941 law, but not allowable under the law applicable to 1942, may be included in determining the net operating loss deduction for 1942.

The *sole* issue presented for decision in this case, and the only question requiring decision, is whether the loss sustained in 1941 and clearly allowable in full and without limitation under the laws applicable to both 1941 and 1942

must be eliminated in computing the amount of the net loss deduction to which the petitioner is entitled for the year 1942.

The only possible basis for a contention that the loss otherwise allowable must be eliminated in the computation of the amount of the net loss deduction is that such elimination is required as one of the "exceptions, additions and limitations provided in subsection (d)" of section 122 of the Internal Revenue Code. Of the exceptions, additions and limitations provided in subsection (d) of section 122, the only one which could have any possible application is that appearing in subparagraph (4) of section 122(d) dealing with gains and losses from the sales or exchanges of capital assets. Section 122(d)(4) of the Internal Revenue Code was amended by the Revenue Act of 1942. Before amendment, it provided:

> Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117(b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of the long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of short-term capital gains.

Section 150(e) of the Revenue Act of 1942 amended section 122(d)(4) to read as set forth below:

> Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to section 117(b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains;

Section 101 of the Revenue Act of 1942 provides:

> Except as otherwise expressly provided, the amendments made by this title shall be applicable

only with respect to taxable years beginning after December 31, 1941.

Neither section 123(a) of the Revenue Act of 1942 which added subparagraph (4) to section 23(g) of the Internal Revenue Code nor section 150(e) of the Revenue Act of 1942 amending section 122(d)(4) of the Internal Revenue Code contains any provisions with respect to the effective date thereof. Consequently, both sections were subject to section 101 of the Revenue Act of 1942, and by that section made "applicable only with respect to taxable years beginning after December 31, 1941".

Regardless of the arguments which may be made to support the proposition that a deduction not allowable under the law applicable to the year 1941 may not be allowable in the computation of the net operating loss deduction for the year 1942 even if allowable under the 1942 law, there can be no rational basis for contending that a loss allowable for the year 1941 must be eliminated in the computation of the net operating loss deduction for the year 1942 unless such elimination is required by the provisions of the law applicable to the year 1942.

Petitioner concedes that if it were claiming a net operating loss deduction to be allowed in the year *1941*, the loss in question would be eliminated in the computation of the net operating loss deduction. But, the petitioner is *not* claiming a net operating loss deduction for the year 1941. Obviously, a loss occurring in the year 1941 cannot result in a net operating loss deduction allowable for the year 1941 since the net operating loss deduction by its very nature is dependent upon the losses of some other taxable period. Consequently, the provisions of section 122 of the Internal Revenue Code are purely academic in the year 1941 when the excess of the deductions over the gross income actually occurred. It is only when the taxpayer

endeavors to carry over such excess of deductions over the gross income to some other year that the operation of section 122(d) comes into play, and it is necessary to determine the extent to which such excess of deductions over gross income in the year 1941 may be carried over and allowed as a deduction in the computation of the taxpayer's 1942 tax liability. We submit that there is absolutely no basis in reason for looking at the 1941 law to determine to what extent the excess of deductions over gross income would have resulted in a net loss deduction allowable in the year 1941 when no such deduction is claimed for the year 1941, and it is obvious that the excess of deductions over gross income for 1941 could not, under any possible circumstances, also result in a net operating loss deduction for 1941. The taxpayer clearly had an excess of deductions over gross income in 1941 which it is claiming as a deduction for 1942; it follows, we submit, that whether such excess of deductions over gross income is allowable in 1942, and the adjustments, if any, which should be made therein in determining the amount allowable, must be determined by the law applicable to the year 1942.

Having determined that there was an excess of deductions allowable for the year 1941 over the gross income for that year in the identical amount, regardless of whether the law applicable to the year 1941 or the year 1942 is considered determinative, the only other question in this case is whether one of the deductions resulting in the excess of deductions over gross income must be eliminated in determining the amount of the net loss deduction allowable for the year 1942. The petitioner submits that section 122(d)(4) of the Internal Revenue Code, as amended by section 150(c) of the Revenue Act of 1942, does not require any reduction whatsoever in the excess of the deductions over the gross income for 1941 which is allowable as a net

operating loss deduction for the year 1942. The fundamental error of the respondent and the courts below is in concluding that section 122(d)(4), as amended, requires the elimination of the loss in question since such loss was a capital loss in 1941 and the section states that gains and losses from sales or exchanges of capital assets shall be taken into account without regard to section 117(b), and that, as so computed, the amount deductible on account of such losses shall not exceed the amount includible on account of such gains. That error is the result of a failure to consider the meaning of the phrase "gains and losses from sales or exchanges of capital assets" as used in section 122(d)(4) as amended.

The terms "long-term capital gains", "long-term capital losses", "short-term capital losses", "short-term capital gains" and "gains and losses from sales or exchanges of capital assets" are given specific definitions in the Internal Revenue Code (sections 23(g) and 117). Consequently, when these words are used in the statute, they must be given the well defined meaning which Congress has assigned to them (*Fox* v. *Standard Oil Co.*, 294 U. S. 87 [9]). By section 123(a) of the Revenue Act of 1942 amend-

[9] "* * * * There might be force in this suggestion if the statute had left the meaning of its terms to the test of popular understanding. Instead, it has attempted to secure precision and certainty by rejecting a test so fluid and indeterminate and supplying its own glossary. The goods offered for sale are to be understood as having reference to goods 'of any kind', and the place at which the sale is made shall include not only places that in the common speech of men would be designated as stores, but, broadly speaking, any mercantile establishment, whether a store or something else. In such circumstances definition by the average man or even by the ordinary dictionary with its studied enumeration of subtle shades of meaning is not a substitute for the definition set before us by the lawmakers with instructions to apply it to the exclusion of all others. Cf. Midwestern Petroleum Corp. v. State Tax Comrs., 206 Ind. 688, 187 N. E. 882. There would be little use in such a glossary if we were free in despite of it to choose a meaning for ourselves." (*Fox* v. *Standard Oil Co.*, 294 U. S. 87, 95.)

ing section 23(g) of the Internal Revenue Code, Congress specifically provided that stock in an affiliated corporation (as there defined) shall not constitute a capital asset. It is inescapable therefore, we submit, that when in section 150(e) of the same Revenue Act of 1942 (amending section 122(d)(4) of the Code) Congress used the term "capital assets", it intended that that term did not include stock in an affiliated corporation. Where a term has once been defined, it is unnecessary to repeat that definition whenever such term is again used in the statute; the use of the term itself is equivalent to a repetition of the definition. Section 23(g)(2) of the Internal Revenue Code, to which section 23(g)(4) specifically relates, sets forth a rule "for the purposes of this chapter". Since section 122 of the Internal Revenue Code is a part of the same chapter, the definition in section 23(g)(4) necessarily applies to section 122(d)(4). If we eliminate in section 122(d)(4), as amended, the words of art "capital assets" and substitute therefor the actual definition of capital assets, we will find that stock in an affiliated corporation is not included within the definition. The result is that there is nothing in the law adopted by Congress in 1942 and made applicable with respect to years beginning after December 31, 1941 which provides that in computing 1942 tax liability losses on the worthlessness of stock in an affiliated corporation "shall not exceed the amount includible on account of" gain from the sales or exchanges of capital assets.

It is clear, therefore, we submit, that if in determining 1942 tax liability the exceptions, additions and limitations required to be made in determining the amount of the 1942 deduction must be computed in accordance with the provisions of the Internal Revenue Code specifically made applicable with respect to the year 1942, section 122(d)(4)

of the Internal Revenue Code as it existed in 1942, and not as it existed in some prior year, must be applied. If section 122(d)(4) of the Internal Revenue Code, as it existed in 1942, is applied in this case, it will follow automatically that the deduction which the petitioner has claimed is proper and allowable.

In *Moore, Inc.* v. *Commissioner* (4 T. C. 404, aff'd 151 F. (2d) 527), the specific question involved was whether section 122(d)(4) of the Internal Revenue Code as it existed in 1942, or as it existed in 1941, was to be applied in computing the taxpayer's tax liability for the year 1942. Both The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit held that section 122(d)(4) of the Internal Revenue Code as it existed in 1942 was to be applied. In its opinion in the instant case (9 T. C. 314; R. 191), the Tax Court did not overrule its decision in the *Moore, Inc.* case but based its decision on a purported distinction which the respondent admits is without foundation. The decision of the Tax Court in *Cambria Collieries Co.* v. *Com'r* (10 T. C. 1172), is not inconsistent with the *Moore, Inc.* case. In the *Cambria Collieries Co.* case, there was not involved the question of an adjustment under section 122(d), but a situation where a deduction was allowable under the law applicable to one year but not under the law applicable to another year. That case is, therefore, distinguishable from both this case and the *Moore, Inc.* case. That the Tax Court has never abandoned the *Moore, Inc.* case nor the basic principles upon which it was decided is evidenced by its decision in *Community Public Service Company* v. *Com'r* (12 T. C. #118), in which the *Moore, Inc.* case was cited with approval, and it was declared that "the Moore case is in principle applicable here".

E. The intention of Congress is clearly indicated by the fact that in every instance in which it has been the will of the legislature that a factor entering into the determination of tax liability (when such factor depends upon events occurring outside the taxable year), should be interpreted in accordance with the law applicable to the year of the event rather than to the year of tax liability, Congress has clearly so provided.

This case involves corporate income taxes and corporate excess profits taxes for the calendar year 1942, imposed by Chapters 1 and 2, respectively of the Internal Revenue Code (Title 26, United States Code). Each of these taxes is measured by the net income, as defined by the Code, for, in the instant case, the calendar year 1942. Net income is the excess of gross income over the deductions allowed. (Section 21 Internal Revenue Code (Title 26, United States Code); see p. 39 herein.)

Most of the factors which enter into the determination of net income are the result of events occurring within the taxable year. Whether a given item of gross income is gross income for 1942 depends upon whether it was received in 1942 or whether the event which caused it to be accrued occurred in 1942. Whether a given expense is a deduction of 1942 depends upon whether it was paid in 1942 or upon whether the event which caused it to be accrued occurred in 1942.

There are, however, many factors entering into the determination of net income which are the result of events which do not occur within the taxable year.

For example, property which is sold at a profit or a loss within the taxable year may have been acquired in a prior year. The circumstances of acquisition are factors entering into the determination of net income which depend

upon events occurring outside the taxable year. Again, in the taxable year it is necessary to take into consideration in the taxable year a part of the income from an installment sale made in a prior year (see section 44(a), Internal Revenue Code (Title 26, United States Code); p. 39 herein). The sale is an event not occurring in the taxable year. Many other such illustrations might be given.

The net operating loss deduction here in question is such a factor, depending upon events occurring outside the taxable year.

Congress has consistently and regularly, whenever its intention has been that such a factor should be determined by the law applicable to the year of the event, rather than to the year of the tax liability, specifically so provided. There are more illustrations of this in the revenue laws than space or time will permit us to specify, but the following should suffice.

As pointed out in the opinion of The Tax Court in the *Moore, Inc.* case (4 T. C. 404, 406), the Revenue Acts of 1924, 1926, 1928 and 1932 each contained a provision to the effect that the net loss to be carried forward from one year to a succeeding taxable year was to be computed under the law applicable to the earlier year. The provisions of the Revenue Act of 1932 permitting the net loss deduction was repealed as of January 1, 1933 by section 218(a) of the National Industrial Recovery Act (June 16, 1933).

When, after a lapse of six years, Congress reinstituted the principle of the carry-over of a net loss as a deduction in a subsequent year, the Internal Revenue Code was amended by section 211(b) of the Act of June 29, 1939 by the additions of sections 23(s) and 122. It is apparent that the language of the prior revenue acts was borrowed liberally in section 122. However, the provisions of the prior

acts to the effect that the law applicable to the prior year was to be applied in determining the amount of the net loss to be carried forward were omitted. This omission was taken by The Tax Court in its opinion in the *Moore* case as an indication that Congress did not intend to have the law of the prior year apply, a position supported by the familiar principle that some significance must be attached to the omission of words in the reenactment of a statute. As was said in *Pirie* v. *Chicago Title & Trust Co.* (182 U. S. 438, 448):

> "The words in italics are omitted from the act of 1898. Was the omission without purpose? The omission of a condition is certainly not the same thing as the expression of a condition. Was it left out in words to be put back by construction? Taken from the certainty given by prior use and prior decisions, and committed to doubt and controversy? There is a presumption against it When the purpose of a prior law is continued, usually its words are, and an omission of the words implies an omission of the purpose This rule we lately applied in *Bardes* v. *First Nat. Bank*, 178 U. S. 524, 44 L. ed. 1175, 20 Sup. Ct. Rep. 1000. In that case, in determining whether the jurisdiction of the circuit and district courts of the United States was concurrent with the state courts in certain suits at law and equity between the assignee in bankruptcy and the adverse claimant of property of the bankrupt, the statutes of 1841 and 1867 were compared with that of 1898, and from the omission from the latter of certain provisions of the former statutes it was decided that such jurisdiction did not exist. It was said by the court, speaking by Mr. Justice GRAY: 'We find it impossible to infer that when Congress, in framing the act of 1898, entirely omitted any similar provision, and substituted the restricted provisions of § 23, it intended that either of those courts should retain the jurisdiction which it had under the obsolete provision of the earlier acts.'"

The fact that Congress in other provisions of the Internal Revenue Code has made it clear when the provisions of prior law are to control is an indication that Congress had no such intention in the present case. For example, section 113(a)(3) of the Internal Revnue Code provides:

> The basis of property shall be the cost of such property; except that—
>
> • • • • • • •
>
> (3) Transfer In Trust After December 31, 1920.—If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise) the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer *under the law applicable to the year in which the transfer was made*. (Italics supplied.)

Language similar to the italicized portion of section 113 (a)(3) as quoted above will be found in subsections (a)(5), (6), (7), (8), (9) and (13) of section 113 of the Internal Revenue Code.

The above are a few of the many instances in which Congress has expressed its intention that the law applicable to the year of an event occurring outside the taxable year shall govern the determination of income.

On the other hand, there have been situations in which Congress, by remaining silent as to the applicable law, has indicated an intention that the law of the year for which the liability is being ascertained, is to govern.

A familiar situation in which a transaction occurring in one taxable year affects the tax liability of a future taxable year is where a taxpayer sells property on the installment plan and in accordance with the provisions of section 44 of the Internal Revenue Code elects to report his profit

on the installment basis. The sale may or may not have constituted the sale or exchange of a capital asset under the law applicable to the year of sale. However, the character of the income, whether capital gain or ordinary income, to be reported with respect to such sale in a subsequent year is governed by the law in effect during such subsequent year and not by the law in effect during the year of sale. (*Snell* v. *Com'r*, 97 F. (2d) 891; *Hay* v. *Com'r*, 25 B. T. A. 96; Example I of Section 29.117-7 of Regulations 111.) [10]

The Court below dismissed the argument based upon the *Snell* and *Hay* cases and Section 29.117-7 of Regulations 111 by the observation (R. 222) that "such subsequent installment payments are properly governed by the law of the year in which received. The Regulation deals with a situation entirely different from the one here involved". We submit that the two situations are not entirely different. In both cases, there is a transaction in one year which affects the tax liability of a subsequent year. In the one case, the taxpayer sells property at a profit which need not be included in full in income in the year of sale but may be deferred to a future period. In the other case, a loss is sustained which, with the other deductions allowable, exceeds the net income for the year of loss and the question is the carry-over of such loss to the succeeding year. If, in the one case, the character of the income to be included in the later year is to be determined by whether the law of the later year defines the property

[10] Section 151(b) of the Revenue Act of 1942 added subsection (j) to section 117 of the Internal Revenue Code and by section 101 of the Revenue Act of 1942 (the identical section applicable to the amendments to sections 122(d) and 23(g)(4) of the Code) the amendment was made "applicable only with respect to taxable years beginning after December 31, 1941". The example of the Regulations cited shows that in the case of a sale in 1941 (not resulting in a capital gain under the law applicable to that year) the profit to be reported in 1942 may be reported as a capital gain under section 117(j).

sold in the earlier year as a capital asset, why should not the character of the loss to be carried over to the later year likewise be determined by the law applicable to the later year? In each case, the transaction giving rise to the gain or loss occurred in the prior year and did, or did not, constitute a sale or exchange of a capital asset under the law applicable to such earlier year. However, in neither case are we concerned with the taxpayer's tax liability for the earlier year. We submit that in both cases the taxpayer's tax liability for the later year must be determined in accordance with the provisions of law made applicable "with respect to" the later year and not by what the law may have provided in the earlier period, and that this is particularly so where the only question, as in this case, is whether the current law requires that the loss in the prior year shall or shall not be eliminated in computing the current year's net operating loss deduction.

Other cases in which the courts have held that, in the absence of clearly indicated Congressional intent to the contrary, a factor entering into the determination of tax liability for one year but dependent upon events occurring outside the taxable year is to be interpreted in the light of the law applicable to the year for which tax liability is being determined, are:

Community Public Service Company v. *Commissioner* (12 T. C. No. 118, decided May 31, 1949) in which it was held that unused excess profits tax credit carry-overs from 1941 and 1942 to 1943 (dependent upon events occurring in years other than 1943) were to be computed under the law applicable to 1943—the year for which tax liability was being determined.

Forstmann v. *Rogers* (128 F. (2d) 126 United States Circuit Court of Appeals for the Third Circuit) in which the basis of property acquired in 1922 and sold in 1928 was

determined in accordance with the law applicable to 1928, the year of sale, and not under the law applicable to 1922, the year of the event.

In *Döckendorff* v. *The United States* (84 Fed. Supp. 372) decided by the Court of Claims on June 6, 1949, the fiscal year of a partnership was from October 1, 1941, to September 30, 1942. On October 17, 1941, it realized gains which, if the law applicable to 1941 were applied, constituted ordinary income. Under law applicable to 1942, however, such gains were capital gains. It was held, in the case of a partner, that for the purpose of determining his liability for the calendar year 1942 (in which year he was required to report his share of the partnership profits for said fiscal year) the law applicable to 1942 should govern—not the law applicable to the time when the event, the sale, occurred.

F. The report of the Senate Finance Committee on the Revenue Bill of 1942 demonstrates that it was the intention of Congress that the law applicable to the year of tax liability should govern.

The correctness of the position contended for by the petitioner here and adopted by The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit in the *Moore, Inc.* case is demonstrated by the Report of the Senate Finance Committee on the Revenue Bill of 1942. The Senate Finance Committee proposed an amendment to the Revenue Bill of 1942 as passed by the House. Section 155 of the Senate Finance Committee Bill (section 153 of the Bill as finally enacted) amended, among other things, section 122(b) of the Internal Revenue Code to provide for a different definition of a net operating loss carry-over than had theretofore been contained in the Code. The amendments proposed by the Committee were expressly made applicable only to taxable years beginning after December 31, 1940. In its Report with respect to this

amendment, the Senate Finance Committee stated (Senate Report No. 1631, 77th Congress, Second Session, p. 123; Cumulative Bulletin 1942-2, p. 596):

> "The net operating loss deduction for any taxable year is the sum of the carry-backs and the carry-overs to such taxable year. The amendments made by this section *are applicable to all taxable years beginning after December 31, 1940.* Thus, in the case of a taxpayer on the calendar year basis, *the carry-overs to the taxable year 1941 from the taxable years 1939 and 1940*, and the carry-backs to such taxable year from the taxable years 1942 and 1943 *will be determined under the amendments made by this section.*" (Italics supplied.)

Thus, there was a specific recognition by the Congressional Committee that the amendment although applicable only "to all taxable years beginning after December 31, 1940" would be effective in determining the carry-overs to the taxable year 1941 from the taxable years 1939 and 1940. The Court below (R. 221) completely misconceived the significance of this Report. Section 153 of the Revenue Act of 1942 did *not* merely add a provision permitting net operating loss carry-backs. Subsection (b) of that section did amend the prior law to permit carry-backs as well as carry-overs. However, subsection (a) of the section deals with the manner of computing the *amount* of a carry-back or carry-over. Under section 153(c) of the Revenue Act of 1942 amending section 122(e) of the Code, no carry-back is permitted to years prior to 1941. Accordingly, the amount of any carry-overs from 1939 and 1940 to 1941 could not in any way be influenced by carry-backs from subsequent years. It is obvious, therefore, that when the Committee referred to carry-overs from 1939 and 1940 to 1941 being determined under the amendments, it was *not* referring to the amendments effected by section 153(b) of the Revenue Act of 1942 providing for carry-backs.

As mentioned above, subsection (a) of section 153 of the Revenue Act of 1942 deals with the manner of computing the amount of carry-overs and carry-backs. Subsection (b) of section 122 of the Internal Revenue Code, as it previously existed, was amended by being subdivided into two subparagraphs, subparagraph (1) being concerned with net operating loss carry-backs and subparagraph (2) being concerned with net operating loss carry-overs. In this connection, the Senate Finance Committee (Senate Report No. 1631, 77th Congress, Second Session, p. 122; Cumulative Bulletin 1942-2, p. 596) said:

> "The *amount* which may be carried back or carried forward is limited in the case of each such preceding or succeeding year to the amount which was not used to offset income for any taxable years before such preceding or succeeding year. In determining the *amount* of the net operating loss which is so used to offset income in any taxable year, the net income for such taxable year is computed without the deduction of any carry-over or carry-back from the year in which the net operating loss arose or from any year subsequent thereto *but with certain other adjustments now required under section 122(d)*. The net operating loss which is a carry-over or a carry-back to such taxable year is considered to have been applied against the net income so computed." (Italics supplied.)

As stated by the Senate Finance Committee, the amount of a net loss must be reduced by the amount of the net income of an intervening year "but with certain other adjustments *now* required under section 122(d)".[11] Obviously, the Committee was referring to that part of section 122(b)(2), as amended by section 153(a) of the Revenue Act of 1942, providing that the amount of a net operating loss should be reduced by the amount of the income of the intervening taxable year computed "with the exceptions, additions, and

[11] Italics supplied.

limitations provided in subsection (d)(1), (2), (4), and (6)".

A comparison of section 122(b) before and after amendment (see p. 49 herein) shows that the amended section requires an adjustment under section 122(d)(6), whereas, no such adjustment was required before amendment.

The Senate Finance Committee did not state merely that in computing income for a year beginning after December 31, 1940 the net loss deduction would be the sum of carry-backs and carry-overs. It went on to say that such carry-backs and carry-overs "will be determined under the amendments made by this section" specifically stating that any carry-overs to the taxable year 1941 from the taxable years 1939 and 1940 would be determined under the amendment.

When in section 153 of the Revenue Act of 1942 Congress amended the method of computing net loss carry-overs and provided that the amendments effected by that section would be applicable only to taxable years beginning after December 31, 1940 and the Senate Finance Committee specifically stated that the carry-overs to the taxable year 1941 from the taxable years 1939 and 1940 would be determined under the amendments, there was a clear recognition that making the amendments applicable to the year 1941 was making the amendments applicable in the computation of tax liability for the year 1941.

Further, the position taken by the Senate Finance Committee is diametrically opposed to the position upon which the respondent has built the foundation for his entire argument. The basic premise upon which the respondent has argued this case is that the amount of the net operating loss is determined by reference to the law applicable to the year of loss, the net operating loss carry-over by reference to the law applicable to the intervening year and only the

net operating loss deduction itself by the law applicable to the year of deduction. Thus, the effect of respondent's argument is that in determining whether a taxpayer is entitled to take a net operating loss deduction in 1941 by reason of a net loss in 1939, the net operating loss is to be computed under the law applicable to 1939, the net operating loss carry-over under the law applicable to 1940 and only the adjustments thereto to determine a net operating loss deduction under the law applicable to 1941. Yet, the Senate Finance Committee stated that such was not the case. It stated that the net operating loss carry-over was to be determined by an amendment applicable only to 1941 and subsequent years, that is, that the law applicable to 1941, and not the law applicable to 1940, was to govern the determination of the net operating loss carry-over. Thus, the foundation itself for the respondent's argument is removed.

We believe that we have demonstrated that it was the intention of Congress that the law applicable to the year 1942 governs in determining whether the loss sustained by the petitioner in 1941 was a "loss from the sale or exchange of capital assets" within the meaning of section 122(d)(4) of the Internal Revenue Code (Title 26, United States Code).

III.

The Court below erred in its conclusions based upon the effective date of the amendment by which paragraph (4) was added to section 23(g) of the Internal Revenue Code (Title 26, United States Code).

The Court below, for all practical purposes, bases its decision on the fact that the addition of paragraph (4) to section 23(g) was effective only for the taxable year 1942 and subsequent years.

We submit that all that is here involved is the tax liability for 1942. That liability is dependent upon an event which occurred in 1941. The fact remains that it is 1942 tax liability that is being determined, and the events of other years, in the absence of clearly expressed Congressional intent to the contrary are to be interpreted in the light of the law applicable to 1942.

The basis upon which The Tax Court of the United States decided the *Moore, Inc.* case is clearly set forth in its opinion as follows (4 T. C. 404, 406):

> "Section 101 of 'Title I—Individual and Corporation Income Taxes' of the Revenue Act of 1942 bears the subtitle 'Taxable Years to Which Amendments Applicable.' It reads: 'Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.'
>
> "Section 150(e) of the Revenue Act of 1942, *supra*, amending subsection (d)(4) of section 122 of the Internal Revenue Code, contains no express provision as to the time that amendment is to become effective.
>
> "Certainly, in its present context, 'with respect to' could mean nothing less than 'in computing a tax liability for.' Thus, paraphrasing section 101, *supra*, section 122(d)(4) of the Internal Revenue Code, as amended by section 150(e) of the Revenue Act of 1942, the provision would read 'shall be applicable • • • in computing a tax liability for taxable years beginning after December 31, 1941.' The question here is the tax liability of petitioner for such a year —the calendar year 1942. The answer to that question requires the use of a formula to compute the amount of the net operating loss for 1941. But the use of that formula has nothing to do with a tax liability for 1941. Its use here is limited to the determination of the tax liability of petitioner for the calendar year 1942.

> "We conclude, therefore, that the 'net operating loss' of petitioner for 1941, to be used in the computation of its net operating loss carry-over to the calendar year 1942 for determining its net income and taxes for that latter year, shall be computed under section 122(d)(4) of the Internal Revenue Code, as amended by section 150(e) of the Revenue Act of 1942."

The identical reasoning was adopted in the opinion of the United States Court of Appeals for the Fifth Circuit in which it was said (151 F. (2d) 527, 528):

> "And we are not left to conjecture as to when the amendment was to become effective, for the amending Act, at the beginning of Part I, Title 1, which consists of amendments to the Revenue Code, declares in Sect. 101, 56 Stat. 802, 26 U. S. C. A. Int. Rev. Acts, 'Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.' There is no 'otherwise' provision. So this amendment applies with respect to taxable years beginning after December 31, 1941. It therefore applies with respect to the taxable year 1942. It is with respect to taxation for that year that the carry-over produced by a capital loss is here claimed as a deduction; and to ascertain what if anything is deductible by way of carry-over from 1941, we think, as did the Tax Court, that by the express words of the amended Section 122(d)(4), 'gains and losses from sales or exchanges of capital assets shall be taken into account' without any reference to what sort of result would have been figured out in 1941 under the then law. * * * "

In the instant case, the United States Court of Appeals for the Sixth Circuit has adopted a directly contrary view. It is stated in the opinion of that Court (170 F. (2d) 1001, 1004; R. 219) that the *Moore, Inc.* case involved section

122(d)(4) of the Internal Revenue Code, whereas here, we are concerned with section 23(g)(4). This statement overlooks completely the facts that the only issue in this case, as in the *Moore* case, is whether an adjustment is required under section 122(d)(4), and that when Congress in section 122(d)(4) used the term "capital assets" it was necessarily using that term as it is defined in sections 23(g)(4) and 117.

The Court below, in effect, concedes that if the provision in section 101 of the Revenue Act of 1942 that the amendments "shall be applicable only with respect to taxable years beginning after December 31, 1941" is interpreted as it was in the *Moore, Inc.* case to mean nothing less than "in computing a tax liability for" taxable years beginning after December 31, 1941, the position of the petitioner here would be correct. The Court stated (R. 220):

> "* * * The argument might have some merit if the words of the statute are so changed, but we are not authorized to change them, and we believe there is a substantial difference between the phrase 'with respect to' as it stands in the statute and the phrase 'in computing a tax liability for' as urged by Petitioner. It is true that in the present case we are not computing a tax liability for 1941, but if we make the 1942 Amendment applicable to the transaction in 1941 we are making it applicable 'with respect to' a transaction in the taxable year 1941 contrary to the provisions of the amendment."

The Court, without attempting to offer any interpretation of the words "with respect to" in section 101 of the Revenue Act of 1942, has attempted to write into the statute a limitation to the effect that the amendment can have no application to an event occurring prior to the effective date thereof, regardless of whether the tax liability in question is for a period prior to, or subsequent to, such effective date, and regardless of the effect which such event may have

"with respect to" the subsequent period. The fact is, however, that the statute does not refer to transactions occurring in any period. The statute directs itself *to* taxable *years*. There is nothing to indicate that Congress in any way had in mind *events* occurring *in* any particular period of time. We submit that when in a revenue statute Congress makes an amendment applicable "with respect to" a taxable year, the language, in the words of The Tax Court in the *Moore, Inc.* case, "could mean nothing less than 'in computing a tax liability for' ". It may be suggested that the words "with respect to" are not the same words as "in computing a tax liability for" and that if Congress had intended the latter, it could have so stated. The fact is that the words "with respect to" are broad and general and more inclusive than the words "in computing a tax liability for". We suggest that Congress used the broad and general words deliberately but not as an indication of intent that the amendment should not be applicable in computing tax liability for the year to which the amendment was made applicable. The use of the words "in computing a tax liability for" alone would be inadequate. The provisions of the Internal Revenue Code are not directed solely to the computations of tax liability. The essential function of the Internal Revenue Code is to provide a method for the computation of tax liability, but the Code encompasses much more. For example, it provides methods for the payment and enforcement of the tax liability (sections 51-60, 141-151), for statutes of limitations upon the assessment and refund of taxes (sections 275-277, 322), penalties for evasion of the tax (section 145) and many other related matters. It would, therefore, be inaccurate for Congress to provide that the amendments contained therein shall be applicable only in the computation of the tax liability for a particular year when such amendments relate to matters other than the mere computation of tax liability.

For example, section 136 of the Revenue Act of 1942 amended section 51 of the Internal Revenue Code to remove the requirement that individual tax returns be filed under oath and substituted therefor a requirement that there be a written declaration that the return is made under the penalties of perjury. No specific provision was made for the effective date of this amendment and it was, therefore, by the terms of section 101 of the Revenue Act of 1942 made "applicable only with respect to taxable years beginning after December 31, 1941". That amendment had nothing to do with the computation of tax liability as such. Other amendments, however, were of importance only in connection with the computation of tax liability, as for example, section 103 of the Revenue Act of 1942 amending section 12(b) of the Internal Revenue Code providing for the rates of surtax. We submit, therefore, that when Congress provides that amendments to the Internal Revenue Code "shall be applicable only with respect to taxable years beginning after" a particular date, Congress intends that the amendments shall be given the broadest possible application in connection with any matters affecting taxable years beginning after the date specified. Since some of the amendments are of importance only in connection with the computation of tax liability, the words "with respect to" must necessarily include the sense of "in computing a tax liability for"; although the words "with respect to" can, and should, be interpreted as encompassing more than a mere "in computing a tax liability for", such words cannot properly be given a meaning excluding "in the computation of tax liability for".

A further and more fundamental objection to the reasoning of the Court below that the petitioner's position would require making the 1942 amendment applicable to a transaction occurring in the year 1941 is that the Court miscon-

ceived the basic issue in the case. There actually is no problem of making the 1942 amendment applicable to a 1941 transaction. The only question is whether the loss which the petitioner sustained on the worthlessness, in 1941, of the stock of Reo Sales Corporation must be eliminated in computing the amount of the net loss deduction allowable for the year 1942. As has been previously pointed out, section 122(d)(4) applicable to the year 1942 provides that losses on the sales of "capital assets" shall be eliminated. The 1942 law does not include stock in an affiliated company as a capital asset. Therefore, there is nothing in the law applicable to 1942 which provides that the loss on the worthlessness of the Reo Sales Corporation stock shall be eliminated in computing the net loss deduction allowable for 1942. The fact that the 1942 law states that a particular loss need not be eliminated in computing the net loss deduction for 1942 does not make the 1942 amendment in any way retroactive or applicable "with respect to" transactions in a prior year. The sole and only purpose of the whole of subsection (d) of section 122 is to set forth "the exceptions, additions and limitations" required to be made in arriving at the amount of a net operating loss deduction to be allowed. It does not affect, in any way, the manner or extent to which a transaction shall be reflected in the computation of a prior year's net income; it merely provides the extent to which the gain or loss, or other tax result of the particular transaction, shall be excepted, added or limited, in computing the current year's net operating loss deduction. We submit that the 1942 law in providing that a gain or loss occurring in 1941 shall be excepted and eliminated, or added, or limited in any way in computing a deduction for 1942 and, therefore, the tax liability "with respect to" the year 1942 does not, in any way, involve the question of retroactivity or being made applicable "with respect to" any prior year. Any law which provides for

the allowance of a net loss deduction of necessity must refer to the events of a prior taxable period. Certainly, a statute which provides that a net loss deduction shall be allowed for the year 1942 is not, therefore, automatically a retroactive statute. A statute adopted in 1942, providing for the allowance of a deduction in 1942, and made applicable only to the computation of 1942 and subsequent years tax liabilities cannot, we submit, be considered as in any way having a retroactive application, nor can a statute be considered as retroactive which provides the manner of the computation of a deduction to be allowed in the current and subsequent years.

The Court below argues (R. 221) that if Congress had intended the result for which the petitioner contends "Congress could have given section 23(g)(4) retroactive application by expressly providing that it should be applicable to transactions in preceding years in cases where a tax liability was being computed for taxable years beginning after December 31, 1941, involving transactions in such prior years". Of course, Congress could have used the words suggested. Also, it could, instead of the broad and general words "with respect to", have used the specific words necessary to make it clear in exactly what sense the amendments effected by sections 102 and 103 of the Revenue Act of 1942 dealing with tax rates, section 136(a) dealing with the signing of returns, section 136(b) dealing with penalties or any other section should be applicable "with respect to taxable years beginning after December 31, 1941". That Congress believed that the words suggested by the Court below were unnecessary and were included in the broad and general term is demonstrated by the Report of the Senate Finance Committee (Senate Report No. 1631, 77th Congress, Second Session) (discussed *supra*, p. 26). Here again, the Court below overlooked the fact that the only

question in this case is whether the 1942 law provides that a particular loss shall be eliminated in computing the 1942 net operating loss deduction, and that there is actually no question of retroactivity involved.

The Court below suggests (R.-220) that the interpretation urged by the petitioner, and adopted by both The Tax Court of the United States and the United States Court of Appeals for the Fifth Circuit in the *Moore, Inc.* case, would make the 1942 amendment applicable "with respect to" a transaction in the taxable year 1941. The petitioner does not contend, and never has contended, that the 1942 amendment could in any way affect the manner or the extent to which the 1941 transaction was to affect its 1941 tax liability. The petitioner does contend, however, that the question whether a loss on a transaction occurring in 1941 shall be eliminated in computing the net operating loss deduction in its 1942 tax return must be determined under the law specifically made applicable "with respect to" the taxable year 1942.

Conclusion.

We submit that the judgment of the Court below should be reversed.

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner,
Investment Building,
Washington 5, D. C.

APPENDIX A.

Statutes Cited.

Internal Revenue Code (Title 26, United States Code).

Section 21.

Net Income.

(a) *Definition.*—"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

(b) *Cross References.*—For definition of "Adjusted net income" and "normal-tax net income," see section 13.

Section 23(s).

Deductions from gross income.

In computing net income there shall be allowed as deductions:

* * * * * * *

(s) *Net operating loss deduction.*—For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122.

Section 44(a).

Installment Basis.

(a) *Dealers in Personal Property.*—Under regulations prescribed by the Commissioner with the approval of the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

Section 113(a)(5).

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * * * *

(5) *Property Transmitted at Death.*—If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition. In the case of property transferred in trust to pay the income for life ~~to~~ or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this paragraph property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise. If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, and if the decedent died after August 26, 1937, and if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company, then the basis shall be the fair market value of such property ~~at~~ the time of such acquisition or the basis in the hands of the decedent, whichever is lower. In the case of an election made by the executor under section 811(j), the time of acquisition of the property shall,

for the purpose of this paragraph, be the applicable valuation date of the property prescribed by such section in determining the value of the gross estate. For the purposes of this paragraph the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory or possession of the United States or any foreign country shall be considered to be property "acquired by bequest, devise, or inheritance" from the decedent, if the death of the decedent was after December 31, 1947, and if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under section 811. In the case of property held by a decedent and his surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if the value of any part of the surviving spouse's one-half share of such property was included in determining the value of the gross estate of the decedent and a tax under chapter 3 was payable upon the transfer of the net estate of the decedent, then for the purposes of this paragraph such part of such one-half share of the surviving spouse shall be considered to be property "acquired by bequest, devise, or inheritance" from the decedent, if the death of the decedent was after the date of the enactment of the Revenue Act of 1942 and on or before December 31, 1947; but nothing in this sentence shall reduce basis below that which would exist if the Revenue Act of 1948 had not been enacted.

Section 113(a)(6).

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * * *

(6) *Tax-free Exchanges Generally.*—If the property was acquired, after February 28, 1913, upon an exchange described in section 112(b) to (e), inclusive, or section 112(l), the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 112(b) or section 112(l) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this paragraph, be considered as money received by the taxpayer upon the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

Section 113(a)(7).

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * * *

(7) *Transfers to Corporation.*—If the property was acquired—

(A) after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, or

(B) in a taxable year beginning after December 31, 1935, by a corporation in connection with a reorganization,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

Section 113(a)(8).

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * * *

(8) *Property Acquired by Issuance of Stock or as Paid-In Surplus.*—If the property was acquired after December 31, 1920, by a corporation—

(A) by the issuance of its stock or securities in connection with a transaction described in section 112(b)(5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

Section 113~~(a)~~ ~~(9)~~.

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * * *

(9) *Involuntary Conversion.*—If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion, described in section 112(f), the basis shall be the same as in the case of the property so converted, decreased in the amount of any ~~money~~ received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

Section 117(a)(1). (As that section applied to the taxable year 1941.)

Capital gains and losses.

(a) *Definitions.*—As used in this chapter—

(1) *Capital assets.*—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), or an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue.

Section 117(a)(5). (As that section applied to the taxable year 1941.)

(a) *Definitions.*—As used in this chapter—

* * * * * *

(5) *Long-term capital loss.*—The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 18 months, if and to the extent such loss is taken into account in computing net income.

Section 117(b). (Prior to amendment by section 150(c) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session) and as it applied to the taxable year 1941.)

Capital gains and losses.

* * * * * *

(b) *Percentage taken into account.*—In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 18 months;

66⅔ per centum if the capital asset has been held for more than 18 months but not for more than 24 months;

50 per centum if the capital asset has been held for more than 24 months.

Section 117(b). (After amendment by section 150(c) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session) and as it applied to the taxable year 1942.)

Capital gains and losses.

* * * * * *

(b) *Percentage taken into account.*—In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net capital gain, net capital loss, and net income:

100 per centum if the capital asset has been held for not more than 6 months;

50 per centum if the capital asset has been held for more than 6 months.

Section 117(j).

Gains and Losses From Involuntary Conversion and From the Sale or Exchange of Certain Property Used in the Trade or Business—

(1) *Definition of Property Used in the Trade or Business.*—For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Such term also includes timber with respect to which subsection (k)(1) or (2) is applicable.

(2) *General Rule.*—If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets ~~held for~~ more than 6 months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of

capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains and losses described therein shall be included only if and to the extent taken into account in computing net income, except that subsections (b) and (d) shall not apply.

(B) Losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or capital assets held for more than 6 months shall be considered losses from a compulsory or involuntary conversion.

Section 122(a). (As it read prior to amendment by section 105(e)(3)(A) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session) and as it applied to the taxable year 1941.)

Net operating loss deduction.

(a) *Definition of net operating loss.*—As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).

Section 122(a). (As amended by section 105(e)(3)(A) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session) and as it applied to the taxable year 1942.)

Net operating loss deduction.

(a) *Definition of net operating loss.*—As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions and limitations provided in subsection (d).

Section 122(b). (As it read prior to amendment by section 153(a) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session).)

(b) *Amount of carry-over.*—The term "net operating loss carry-over" means in the case of any taxable year the sum of:

(1) The amount, if any, of the net operating loss for the first preceding taxable year; and

(2) The amount of the net operating loss, if any, for the second preceding taxable year reduced by the excess, if any, of the net income (computed with the exceptions and limitations provided in subsection (d)(1), (2), (3), and (4)) for the first preceding taxable year over the net operating loss for the third preceding taxable year.

Section 122(b). (As it read after amendment by section 153(a) of the Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session) and as it applied both to the taxable year 1941 and to the taxable year 1942.)

(b) *Amount of carry-back and carry-over.*—

(1) *Net operating loss carry-back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back

in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

(2) *Net operating loss carry-over.*—If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss and without regard to any net operating loss carry-back. For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1941 shall be reduced by the sum of the net income for each of the two preceding taxable years (computed for each such preceding taxable year with the exceptions, additions, and limitations provided in subsection (d)(1), (2), (4), and (6), and computed by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year).

Section 122(c). (As it read prior to amendment by sections 105(e)(3)(B) and 153(b), Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session).)

Amount of net operating loss deduction.—The amount of the net operating loss deduction shall be the amount of the net operating loss carry-over reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d)(1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal-tax net income (computed without such deduction).

Section 122(c). (As amended by section 153(b), Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session), and as it applied to the taxable year 1941.)

Amount of net operating loss deduction.—The amount of the net operating loss deduction shall be the aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d)(1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal tax net income (computed without such deduction).

Section 122(c). (As amended by sections 105(e)(3)(B) and 153(b), Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session), and as it applied to the taxable year 1942.)

Amount of net operating loss deduction.—The amount of the net operating loss deduction shall be the aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year

reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d)(1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal-tax net income (computed without such deduction and without the credit provided in section 23(e)).

Section 122(d)(1). (Prior to amendment by section 105(e)(3)(C), Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session), and as it applied to the taxable year 1941.)

(d) *Exceptions and limitations.*—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114(b)(2), (3), or (4).

Section 122(d)(1). (After amendment by section 105(e)(3)(C), Revenue Act of 1942 (Public Law No. 753, 77th Congress, 2nd Session), and as it applied to the taxable year 1942.)

(d) *Exceptions, additions, and limitations.*—The exceptions, additions, and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114(b)(2), (3), or (4).

Section 122(d)(2). (Prior to amendment by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1941.)

(d) *Exceptions and Limitations.*—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23(b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax exempt obligations.

Section 122(d)(2). (After amendment by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1942.)

(d) *Exceptions, Additions and Limitations.*—The exceptions, additions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23(b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax exempt obligations.

Section 122(d)(3). (Prior to amendment by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1941.)

(d) *Exceptions and Limitations.*—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(3) No net operating loss deduction shall be allowed.

Section 122(d)(3). (As amended by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1942.)

(d) *Exceptions, Additions and Limitations.*—The exceptions, additions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(3) No net operating loss deduction shall be allowed.

Section 122(d)(4). (Prior to amendment by section 105(e)(3)(C), and section 150(e) of the Revenue Act of 1942 and as it applied to the taxable year 1941.)

(d) *Exceptions and Limitations.*—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(4) Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117(b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of short-term capital gains.

Section 122(d)(4). (After amendment by section 105(e)(3)(C) and section 150(e) of the Revenue Act of 1942 and as it applied to the taxable year 1942.)

(d) *Exceptions, Additions and Limitations.*—The exceptions, additions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(4) Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to

the provisions of section 117(b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains.

Section 122(d)(5). (Prior to amendment by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1941.)

(d) *Exceptions and Limitations.*—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions and limitations specified in paragraphs (1) to (4) of this subsection.

Section 122(d)(5). (After amendment by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1942.)

(d) *Exceptions, Additions and Limitations.*—The exceptions, additions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be com-

puted with the exceptions, additions and limitations specified in paragraphs (1) to (4) of this subsection.

Section 122(d)(6). (After amendment by section 105(e)(3)(C), Revenue Act of 1942 and as it applied to the taxable year 1942.)

(d) *Exceptions, Additions and Limitations.*—The exceptions, additions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(6) There shall be allowed as a deduction the amount of tax imposed by subchapter E of Chapter 2 paid or accrued within the taxable year, subject to the following rules—

(A) No reduction in such tax shall be made by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

(B) Such tax shall be computed without regard to the adjustments provided in section 734; and

(C) Such tax, in the case of a consolidated return for excess-profits tax purposes, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary.

Section 122(e). (Prior to amendment by section 153(c), Revenue Act of 1942.)

No carry over from year prior to 1939.—As used in this section, the terms "third preceding taxable year", "second preceding taxable year", and "first preceding taxable year" do not include any taxable year beginning prior to January 1, 1939.

Section 122(e). (After amendment by section 153(c), Revenue Act of 1942 and as it applied to the taxable years 1941 and 1942.)

No carry back to year prior to 1941.—As used in this section, the term "preceding taxable year", and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941.

Title 28, United States Code (Public Law 773, 80th Congress, Chapter 646, 2nd Session).

Section 1254.

Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment of decree;

(2) By appeal by a party relying on a state statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

APPENDIX B.

Section 29.117-7, Regulations 111.

Gains and losses from involuntary conversions and from the sale or exchange of certain property used in the trade or business.—Section 117(j) provides that the recognized gains and losses

(a) from the sale, exchange, or involuntary conversion of property used in the trade or business of the taxpayer at the time of the sale, exchange, or involuntary conversion, held for more than six months, which is

(1) of a character subject to the allowance for depreciation provided in section 23(l), or

(2) real property,

provided that such property is not of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or is not held by the taxpayer primarily for sale to customers in the ordinary course of trade or business, and

(b) From the involuntary conversion of capital assets held for more than six months, and

(c) From timber held for more than six months which is considered to have been sold under the provisions of section 117(k)(2), and with respect to taxable years beginning after December 31, 1943, from timber owned or held under a contract right to cut for more than six months prior to the beginning of the taxable year which is considered to have been sold or exchanged under the provisions of section 117(k)(1), regardless of whether such timber would be properly includible in the inventory of the taxpayer if on hand at the close of

the taxable year or whether such timber was held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

shall be treated as gains and losses from the sale or exchange of capital assets held for more than 6 months if the aggregate of such gains exceeds the aggregate of such losses. If the aggregate of such gains does not exceed the aggregate of such losses, such gains and losses shall not be treated as gains and losses from the sale or exchange of capital assets.

In determining whether such gains exceed such losses for the purposes of section 117(j), losses upon the destruction in whole or in part, theft or seizure, requisition or condemnation of the property described in section 117(j) are included whether or not there was a conversion of such property into money or other property. For example, if a capital asset held for more than 6 months, with an adjusted basis of $400, is stolen, and the loss from this theft is not compensated for by insurance or otherwise, the $400 loss is included in the computations under section 117(j) to determine whether gains exceed losses. Furthermore, in making this computation, the gains and losses described in section 117(j) are taken into account without regard to the percentage provisions of section 117(b), that is, 100 percent of such gains and losses is taken into account. For example, if a taxpayer sustains a loss of $400 upon the sale under threat of condemnation of a capital asset, held for more than 6 months, such loss is taken into account for the purposes of section 117(j) to the extent of $400, even though only $200 would be taken into account under section 117(b) in computing net income. Similarly, the provisions of section 117(d) limiting the deduction of capital losses are not applicable to exclude any losses from the computations under section 117(j). With these exceptions as to sections

117(b) and 117(d), gains and losses are included in the computations under section 117(j) only to the extent that they are taken into account in computing net income. Thus, losses which are not deductible items under section 24 or section 118 are not included in the computations under section 117(j). Similarly, if a taxpayer reports on the installment basis under section 44 the gain on the sale of property described in section 117(j), only the portion of the gain reported under section 44 in computing net income for the taxable year is included in the computations for such taxable year under section 117(j). Any gains and losses which are not recognized under section 112 are not included in the computations under section 117(j). Thus, if property is involuntarily converted into similar property, so that the gain on such conversion is not recognized under the provisions of section 112(f), such gain is not included in the computations under section 117(j).

If it is determined under the above computations that the gains exceed the losses, all of such gains and losses are treated as gains and losses from the sale or exchange of capital assets held for more than 6 months. All such gains and losses are then subject to the limitations of section 117(b), (c), and (d), relating to the percentage taken into account, the alternative tax in the case of capital gains and losses, and the extent to which capital losses are allowed. If it is determined under the above computations that the gains do not exceed the losses, none of such gains and losses are treated as gains and losses from the sale or exchange of capital assets. Such gains and losses are then not subject to the percentage limitations of section 117(b), and such losses are not subject to the limitations provided in section 117(d). For example, if the taxpayer during the taxable year has losses of $1,000 on the sale of certain depreciable machinery used in his trade or business, held for more than

6 months, and a gain of $400 on the sale under threat of condemnation of a capital asset held for more than 6 months, such losses exceed such gain, and such losses and gain are not treated as losses and gain from the sale or exchange of capital assets. The gain on the sale of the capital asset would therefore be taken into account in full, instead of to the extent of 50 percent as provided in section 117(b).

Section 117(j) does not apply to gains and losses on the sale, exchange, or involuntary conversion of any property which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or which is held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, but not including as such property timber which is considered to have been sold or exchanged as provided in section 117(k)(1) or which has been sold as provided in section 117(k)(2). The involuntary conversion of property described in section 117(j) is the conversion of such property into money or other property as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof.

The following examples will illustrate the operation of the provisions of section 117(j):

Example (1). A, an individual, makes his income tax return on the calendar year basis. A's recognized gains and losses for 1942 of the kind described in section 117(j), computed without regard to the limitations in section 117(b), are as follows:

	Gains	*Losses*
1. Gain on sale of machinery, used in the business and subject to an allowance for depreciation, held for more than six months	$ 4,000	

	Gains	*Losses*
2. Gain reported in 1942 (under section 44) on installment sale in 1941 of factory premises used in the business (including building and land, each held for more than six months)	$ 6,000	
3. Gain reported in 1942 (under section 44) on installment sale in 1942 of land held for more than six months, used in the business as a storage lot for trucks	2,000	
4. Gain on proceeds from requisition by Government of boat, held for more than six months, used in the business and subject to an allowance for depreciation	500	
5. Loss upon the destruction by fire of warehouse, held for more than six months and used in the business (excess of adjusted basis of warehouse over compensation by insurance, etc.)		$3,000
6. Loss upon theft of unregistered bearer bonds, held for more than six months		5,000
7. Loss in storm of pleasure yacht, purchased in 1940 for $1,800 and having a fair market value of $1,000 at the time of the storm		1,000
8. Total gains	$12,500	
9. Total losses		$9,000
10. Excess of gains over losses	3,500	

Since the aggregate of the respective recognized gains ($12,500) exceeds the aggregate of such losses ($9,000), such gains and losses are treated under section 117(j) as gains and losses from the sale or exchange of capital assets held for more than six months. Therefore, under the provisions of section 117(b), A will take into account only 50 percent of the amounts of items 1 to 7. Such items are treated the same as any other long-term gains and losses of A, and will cause the inclusion of $1,750 (50 percent of item 10) in computing his net long-term capital gain for the purposes of the alternative tax provided by section 117(c)(2).

Example (2). A's yacht, used for pleasure and acquired for such use in 1935 at a cost of $25,000, was requisitioned by the Government in 1942 for $15,000. A sustained no deductible loss, and no loss with respect to such requisition will be included in the computations under section 117(j).

Example (3). If in example (1) the taxpayer were a corporation, then there would be taken into account 100 percent of the gains and losses in items 1 to 7, which are treated for all purposes as gains and losses from the sale or exchange of capital assets held for more than six months. The percentage provisions of section 117(b) do not apply to corporations. These items will cause the inclusion of $3,500 (item 10) in computing the net long-term capital gain of the corporation for the purposes of the alternative tax provided by section 117(c)(1).

Example (4). If in example (1) A also had a loss of $4,000 from the sale under threat of condemnation of a capital asset held for more than six months, then the gains ($12,500) would not exceed the losses ($9,000 + $4,000, or $13,000). Neither the loss on such sale of a capital asset

nor any of the other items set forth in example (1) would then be treated as gains and losses from the sale or exchange of capital assets, but all of such items would be treated as ordinary gains and losses. Since all of such items are included in full in computing net income, the net effect of such items will be the inclusion in computing net income of a loss of $500 (the excess of the $13,000 losses over the $12,500 gains). This same result would be obtained if A were a corporation. If the loss on the sale of the capital asset under threat of condemnation were $3,500, the gains and losses would still be treated as ordinary gains and losses and not as capital gains and losses, since the gains ($12,500) would not exceed the losses ($9,000 + $3,500, or $12,500).

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IN THE

Supreme Court of the United States

October Term, 1949

No. 59

REO MOTORS, INC.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER.

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner,
Investment Building,
Washington 5, D. C.

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REPLY BRIEF FOR PETITIONER.

I.

The petitioner for 1941 had an excess of deductions allowed by Chapter I of the Internal Revenue Code over gross income computed under said chapter, regardless of whether "said chapter" means said chapter as it applied to 1941 or said chapter as it applied to 1942; in other words, petitioner had a net loss for 1941.

The last sentence of the first paragraph beginning on page 4 of respondent's brief states that "With the addition of the $1,551,902.79 loss in respect of Reo Sales stock, taxpayer *would have had* * a net loss for 1941". The inference (probably not intended) is that, for the purpose of deter-

* Italics supplied.

mining a net loss for 1941, the loss of $1,551,902.79 should perhaps not be included among the deductions.

At no stage in this case has the respondent ever contended that the loss of $1,551,902.79 was not sustained. In his brief in this Court, he concedes this to be the fact (last full sentence, p. 3, Resp. Br.; footnote 8, p. 22, Resp. Br.).

The respondent also concedes that said loss of $1,551,902.79 was allowed as a deduction by Chapter I of the Internal Revenue Code (last sentence beginning on p. 3, Resp. Br.; second indented sentence, p. 5, Resp. Br.).

The said loss of $1,551,902.79, when added to petitioner's "other allowable deductions totalling $2,215,727.08" (footnote 8, p. 22, Resp. Br.) brings the total of deductions allowed by Chapter I of the Internal Revenue Code to $3,767,629.87.

Petitioner's gross income for 1941 was $2,573,259.89 (footnote 8, p. 22, Resp. Br.).

There was thus, in 1941, an excess of deduction allowed by Chapter I of the Internal Revenue Code over gross income—there was thus a net loss for 1941—of $1,194,369.98.

II.

Respondent has incorrectly stated the petitioner's contention.

In the second sentence beginning on page 8 of respondent's brief it is stated that "Taxpayer contends that the amended section 23(g)(4) * * * is * * * applicable in computing net operating loss for 1941 for the purpose of a carrying over net operating loss deduction (*sic*) in 1942".

On the contrary, we contend that in applying the "exceptions, additions and limitations" provided in section

122(d)(4) to the admitted net loss for 1941 (Point I of this reply brief) for the purpose of determining a net operating loss deduction *for 1942*, the language of section 122(d)(4) should be given the meaning assigned to it by the law applicable to 1942.

The basic premises upon which the petitioner rests its case, which we believe are so fundamental as to bar controversy, are as follows:

1. The law applicable to the year 1942 determines whether a net operating loss deduction is to be allowed in the computation of 1942 tax liability. This is not contested by the respondent.

2. The amount of the net operating loss deduction allowable in the year 1942 is also determined by the law applicable to the year 1942. This is also apparently accepted by the respondent.

3. Congress has the power to provide that either the allowance, or the amount, of a net operating loss deduction shall be determined under the law applicable to some other year. Petitioner does not deny, therefore, that Congress might in the law applicable to 1942 have provided that the amount of a net operating loss deduction allowed in 1942 should be computed by reference to the law applicable to 1941. This, however, would amount to nothing more than an incorporation by reference, and would not change the fact that it is the law applicable to 1942 which determines the amount of the deduction by providing that the deduction should be computed in the same manner as is provided in the 1941 law.

4. In the absence of any provision in the law applicable to 1942 providing that the deduction should be computed in the manner provided in some other law, specifically 1941 in this case, the amount of the deduction must be computed in

the manner provided generally in the law applicable to the year 1942.

The issue in this case, and the only issue, is, therefore, whether Congress in providing for the allowance in 1942 of a net operating loss deduction provided that the amount of that deduction must be computed with the "exceptions and limitations" of section 122(d)(4) of the law applicable to 1941. If the answer is in the affirmative, then the decision below must be affirmed. If it is in the negative, then the petitioner must prevail.

III.

In case of conflict between United States Courts of Appeal for different circuits, there is no presumption that one court is right and the other wrong.

In the last sentence beginning on page 12 of respondent's brief, it is asserted that the "conclusion" "that the decision in *Commissioner* v. *Moore, Inc.* * * * is correct" "can only be accepted after the conflicting decision below is shown to be wrong".

The respondent thus takes the position that the United States Court of Appeals for the Fifth Circuit is wrong until it is proved to be right, and the United States Court of Appeals for the Sixth Circuit is right until it is proved to be wrong.

We submit that there is no such presumption.

IV.

Many, if not most, of the matters argued in respondent's brief relate to issues not raised by the facts in this case.

As the respondent has reiterated several times in his brief, the computation of a net operating loss deduction in-

volves several steps (pp. 16-~~17, 39-41~~). The initial step, as provided in section 122(a), is to determine "the excess of the deductions allowed by this chapter over the gross income". It can be argued that conceivably a case may arise in which it will be important to determine whether by the words "by this chapter" Congress was referring to "this chapter" as it existed in the year in which the deduction is being granted or the year in which the original net loss arose. A taxpayer who in 1942 looks at the law then in effect to determine whether he has a net operating loss deduction allowable in 1942 may, with considerable justification, assume that "by this chapter" is meant the chapter as it then exists in 1942. The respondent assumes that "by this chapter", Congress meant the chapter as it previously existed. We suggest that it is entirely unnecessary in this case to argue which of those position would be correct. The petitioner has the identical "excess of the deductions allowed by this chapter over the gross income" regardless of whether "this chapter" refers to "this chapter" as it existed in 1941 or 1942 (Point I of this reply brief). We submit, therefore, that when the respondent argues that the position contended for by the petitioner, in the instant case, means that a deduction not allowable in the computation of 1941 tax liability would be allowable in the computation of the net operating loss deduction allowable in 1942, and when he sets forth in his brief the allegedly horrible examples flowing therefrom, the respondent is arguing some other case which he apparently prefers to argue but is not meeting the issue involved in this case.

What the petitioner is arguing in this case is that whether the "excess of the deductions allowed by this chapter over the gross income" must be computed under the 1942 or the 1941 law, a question not necessary for decision, the "exceptions, additions and limitations provided in sub-

section (d)" of section 122 must be computed under the law applicable to the year 1942 (Point III of this reply brief).

Even if Congress intended that the excess of deductions over gross income should be computed under the 1941 law, it does not follow that Congress also intended that the "exceptions, additions and limitations provided in subsection (d)" must also be computed under the 1941 law.

When a decision is once made that a net operating loss deduction will be allowed, that means that a net loss for some other year will be allowed as a deduction in the current year, which necessarily creates other questions requiring decision. For example, if Congress in the year 1942 decided for the first time that there should be allowed as a deduction in computing 1942 income a net operating loss carried over from 1941 to 1942, Congress would be immediately faced with the subsidiary question: Shall the excess of deductions over gross income for 1941 be computed under the 1941 or the 1942 law? *

---

* While it is not necessary to a decision in this case, we suggest that one argument for applying the 1942 law is that the deduction allowable in 1942 should rationally be computed on the basis of what is then believed to be the proper and appropriate method for computing the income to be included and the deductions to be allowed, and not upon the basis of what was formerly thought to be correct but now found to be deficient, as is evidenced by the fact that the law has been amended. The Internal Revenue Code is a constantly growing body of law. It is to be presumed that when Congress makes a change, it intends the change to be an improvement, to be availed of thereafter. For example, on the facts in the instant case: The worthlessness of the stock of Reo Sales would not have been a capital loss under the Code as it applied to 1941 except for the provisions of section 23(g). In amending section 23(g) in the Revenue Act of 1942, Congress realized that the old rule was in some cases too harsh. The change was intended as an improvement. Why then should the improvement not be used in subsequent computations required by the law?

Congress, having made the decision (whatever it may have been) that either the 1941 or the 1942 law should govern in determining the excess of the deductions over gross income for 1941, would still have other decisions to make. "Should the full amount of such excess of deductions over gross income be allowed as a deduction in 1942?" If the answer is in the negative, then the question arises "What exceptions, additions and limitations shall be made and under what law shall they be computed?" The arguments which may have influenced the decision (assuming it was so decided) that the excess of deductions over gross income should be computed under the 1941 law would have no application to the decision as to whether the "exceptions, additions and limitations" should be computed under the 1941 or 1942 law.

If we eliminate from the respondent's brief the arguments directed solely to support the proposition that the "excess of deductions allowed by this chapter over gross income" should be computed under the law applicable to 1941 rather than the law applicable to 1942, there will not be much left. When Congress in 1942 states that a loss from 1941 shall be allowed in 1942, with adjustments, there is no logical reason to assume that the adjustments to be made should be made under any law other than the one applicable to 1942. There are no reasons of policy, convenience or fear of allegedly dire results which would influence Congress to require that the adjustments be made under some law other than that applicable to 1942. Congress has not provided that the adjustments shall be made under any law other than that applicable to 1942 and, accordingly, there is no law other than the 1942 law to be applied. In addition, the only Congressional statement bearing on the question supports fully the proposition that the 1942 law governs the "exceptions, additions and limitations" required to be made (see Point VIII of this reply brief).

Similarly, much of respondent's argument in his brief is addressed to the possibility of a net operating loss of a given year being carried back to the first or second preceding years or being carried over to the second succeeding year.

The facts in this case are extremely simple. Petitioner had in 1941 an excess of deductions over gross income. *If* the language of section 122(d)(4) is to be given the meaning assigned to it by the law applicable to 1942 (the taxable year for which we are computing net income and determining liability for tax), said excess of deductions over gross income was a net operating loss, a net operating loss carry-over to 1942, and (with adjustments not in controversy) a net operating loss deduction for 1942. *If* the language of section 122(d)(4) is to be given the meaning assigned to it by the law applicable to 1941, the deductions are so reduced by the exceptions and limitations provided in section 122(d)(4) that there is no net operating loss, no net operating loss carry-over to 1942 and no net operating loss deduction for 1942.

These simple facts present no issue (1) as to whether there was an excess of deductions over gross income in any year; (2) as to whether, or how, such excess might or should be applied as a net operating loss carry-back; or (3) as to whether, or how, such excess might or should be applied as a net operating loss carry-over to a second succeeding taxable year.

We may therefore, on the facts presented by this case, for all practical purposes, eliminate from this discussion all portions of respondent's brief which discuss and rely upon the subjects specified in the preceding paragraph.

The respondent states that "if the tables were turned" (Resp. Br., p. 50, footnote 36), and the petitioner had sustained the loss in 1943, which it was attempting to carry

back to 1941, the petitioner's theory would bar the deduction. That question also is not involved here, but the petitioner suggests that the respondent's assumption is not correct. The petitioner insists that the 1942 law governs in determining whether it may take a deduction in 1942 for a loss occurring in 1941, and the adjustments which must be made in determining the extent to which that loss is allowable. On the other hand, where the law applicable to 1942 provides that a 1942 loss may be carried back to 1941, the 1941 income be recomputed and a refund thereby be granted, there is no reason why the 1942 law does not govern. The respondent apparently assumes that because the petitioner has argued that the 1942 law applies in the computation of tax liability for 1942, the 1942 law applies only if there is involved the question of the computation of a 1942 tax liability. As was pointed out on pages 34, 35 of petitioner's main brief, no contention is made that the words "with respect to" are limited to the meaning "in the computation of tax liability for", nor was any such suggestion made in the *Moore, Inc.* case. What was said by the Tax Court in the *Moore, Inc.* case was that " 'with respect to" could mean *nothing less than* 'in computing a tax liability for' ". (Italics supplied.) We submit, therefore, that the respondent is attempting to create an argument on an entirely unwarranted assumption.

V.

There is no reason for computing a net operating loss except in connection with the determination of a net operating loss deduction.

The respondent takes exception (Resp. Br., p. 36) to the petitioner's statement that the provisions of section 122 of the Internal Revenue Code were purely academic in the

year 1941 so far as the petitioner was concerned. The petitioner had an excess of deductions over gross income in 1941 and, consequently, was not required to pay a tax. Whether section 122 of the Code provided for a net operating loss deduction and the manner in which such deduction was to be computed was, in fact, purely academic since nothing was allowable for 1941. The most that the petitioner had in 1941 was the hope that the law applicable to 1942 would permit the allowance of a net operating loss deduction and that the petitioner would continue in existence and have taxable income against which the deduction could be allowed. That the law applicable to 1941 did provide for such a deduction availed the petitioner nothing. Until the law applicable to 1942 was enacted, the petitioner could not be certain that any deduction at all would be allowed or what would be the amount thereof. Congress may have decided in 1942 that no net operating loss deduction would be allowed as it did in 1933.

VI.

The fact that a net operating loss deduction, on petitioner's theory may not be a constant is not an indication that Congress intended the 1941 law to apply.

It is true that on petitioner's theory, a net operating loss might not be a constant.* There is no indication that Congress intended it to be a constant. Apparently the respondent assumes that nothing so complicated is to be

* The petitioner's theory does not mean, as respondent assumes, that the amount of the net operating loss would change if a deduction not allowable under the law of one year were made allowable under the law of another year. The only change in the amount of the net operating loss, under the petitioner's theory, would occur if there were a change in the "exceptions, additions and limitations" provided in section 122(d).

attributed to Congress. We may properly ask whether it is more complicated and confusing to have a possibly variable net operating loss than it is to have the same language in section 122(d)(4) have a variety of meanings for the purpose of a single net operating loss deduction.

The position which the petitioner is contending for in this case does not involve any question of reaudit, administrative difficulty or the other results of which the respondent complains. In every case, there must be adjustments for the "exceptions, additions and limitations" provided in subsection (d) of section 122 for the year of the loss, for the year of the deduction and for the intervening year, if there be one. There is, we submit, no more question of reaudit or administrative difficulty in making the required adjustments under the law of a single year than there is in making the adjustments under the laws applicable to two or three different years. The adjustments must be made in any event. There is nothing in any way inconsistent in the taxpayer's position with the purposes or general structure of the net operating loss deduction provisions. As we will hereinafter point out, it does, in fact, carry out the averaging principle of the law, whereas, the respondent's position achieves the opposite result.

VII.

Respondent's theory is a distortion of the principle of averaging incomes and losses.

The respondent has stressed the argument that the purpose of the net operating loss provisions is to permit the averaging of income and losses over a period * (Resp. Br., pp. 17, *et seq.*; pp. 45, *et seq.*).

* On page 18 in footnote 4 of respondent's brief, reference is made to articles by L. Raum. Mr. Raum argued the instant case on behalf of the respondent in the United States Tax Court and, therefore, can hardly be considered an unbiased commentator.

The respondent has cited several examples to support his suggestion that the position contended for by the petitioner would be in conflict with that purpose of the statute (Resp. Br., pp. 48, *et seq.*). However, all of the respondent's examples are based upon an issue not involved in this case, that is, whether the 1941 or 1942 law governs in determining "the excess of the deductions allowed by this chapter over the gross income". As we have heretofore pointed out, that is a question not involved in this case and not necessary for decision. Respondent has carefully avoided stating whether the position which he urges this Court to adopt would, in the instant case, be consistent with the declared purpose of the statute to arrive at an averaging of income. However, the application of the respondent's theory to the instant case would be a clear distortion of, and inconsistent with, the theory of the averaging of incomes and losses. As we have heretofore pointed out, we are not concerned with a loss allowable as a deduction under the law of one year, but not under the law of the other year. The loss which the petitioner sustained on the worthlessness of the Reo Sales Corporation stock was allowable without restriction under the laws applicable to both 1941 and 1942. The position urged by the petitioner will result in a true averaging of the petitioner's loss and income for the years 1941 and 1942, whereas, the position urged by the respondent will result in the exact opposite.

Under the petitioner's theory, its loss and income will be truly averaged, and the amount of income upon which it will be taxed for the two years will be substantially the same and unaffected by the accident as to whether a particular item of income happened to be received or accrued in 1941 or 1942 or a particular item of deduction happened to be paid or incurred in 1941 or 1942. Under the respondent's theory, however, there will be no averaging what-

soever of the income upon which the petitioner must pay a tax and, hence, its tax liability will depend completely upon the particular year in which the income or deductions happen to be received or accrued or paid or incurred. For example, if $1,000,000 of the income which the petitioner received in 1942 had been received in 1941, the income upon which the petitioner would pay a tax for the two years would be identical with the amount of the income upon which the petitioner would pay a tax under the petitioner's theory on the actual receipt of the income in 1942. If the income of $1,000,000 had been received in 1941, it would have been offset by the petitioner's loss on the worthlessness of the stock of Reo Sales Corporation, and would have served merely to reduce the amount of the petitioner's net operating loss deduction allowable for 1942. Consequently, the petitioner's taxable income would remain the same in either case. Under the respondent's theory, however, the result would be quite different. If the petitioner had received the $1,000,000 in 1941, it would pay no tax thereon because the income would have been offset by the loss on the Reo Sales Corporation stock, which was fully allowable as a deduction against such income. On the other hand, having received the income in 1942 instead of 1941, the respondent insists that the petitioner pay a tax on such income on the ground that its unabsorbed loss in 1941 cannot be carried forward to offset such income in 1942. It requires a novel process of reasoning to urge in support of a position that the basic purpose of the statute is to permit an averaging of incomes and losses in a case where the application of that position will result in a total absence of averaging.

Throughout his brief, the respondent presents hypothetical examples which he suggests would achieve results which Congress could not have intended, examples, how-

ever, which are based upon the supposition that this case involves the question as to whether the excess of the deductions over the income shall be computed under the law of one year or another, an issue not involved in this case. It is significant that these examples, with one exception, referred to deductions allowable under the law of one year, but not under the law of the other, without any attempt to specify exactly what the deductions are. The example which the respondent cites on page 48 of his brief which does refer to a particular deduction refers to the deduction for amortizable bond premium. The example is, however utterly fallacious for two reasons: *First*, the deduction for an amortizable bond discount is provided for in sections 23(v) and 125 of the Code. However, section 125 of the Code provides in subsection (a) thereof setting forth the "General Rule" that the rules therein set forth shall apply to the amortizable bond premium on the bond "for any taxable year beginning after December 31, 1941". Congress was, therefore, careful to provide that the provisions with respect to the deduction for amortizable bond premiums were applicable not only in the computation of tax liability for taxable years beginning after December 31, 1941, but also only with respect to amortizable bond premiums for any taxable year beginning after December 31, 1941. Consequently, regardless of whatever interpretation of section 122 may be adopted, there is no basis upon which a taxpayer might argue that the amortization of bond premiums occurring *in* 1941 could, in any way, enter into the computation of a deduction. *Second*, corporation B in respondent's example cannot average income and losses for the simple reason that it had no loss.

VIII.

The respondent's answer to petitioner's argument on the Report of the Senate Finance Committee on the Revenue Bill of 1942 is unsound.

On pages 27 and following of petitioner's main brief there is set forth a discussion of the Report of the Senate Finance Committee which the petitioner submits fully supports its position. In attempting to answer the petitioner's argument, the respondent states (Resp. Br., p. 54): "That statement, upon which taxpayer relies (Pet. Br., p. 27), had reference, mainly if not entirely, to the fact that it was permissible under section 122(b) of the Code, as newly amended, not only to carry-over but to carry-*back* net operating losses to 1941, and the carry-back device was specifically made retroactive to cover the taxable year 1941." That statement is untrue, as the respondent knows, or at least should know. As he states on the same page of his brief, the same section of the statute provided that there was to be no carry-backs to years prior to 1941. Therefore, when the Senate Finance Committee stated "that the carry-overs to the taxable year 1941 from the taxable years 1939 and 1940 • • • will be determined under the amendments made by this section", it obviously was not talking about carry-backs. Since, under no circumstances, could anything be carried back to either 1939 or 1940, it is obvious that the carry-overs from 1939 to 1940 could, in no way, be influenced in the slightest by the provisions regarding carry-backs.

The respondent next attempts to avoid the effect of the Committee Report by referring (Resp. Br., p. 55) to the fact that the Committee was referring not to the determination of a net operating loss governed by subsections (a) and (d) of section 122, but to subsections (b) and (c) which

deal with carry-over and carry-back provisions. A similar argument is presented in the last paragraph of footnote 37 on page 56 of respondent's brief.*

As the respondent has pointed out several times in his brief, there are three steps required for the computation of a net operating loss deduction. The first is the computation of the "net operating loss". The second is the computation of the amount of the "net operating loss carry-back" and the "net operating loss carry-over", and third, the amount of the "net operating loss deduction". Each one of these steps requires an adjustment for some, or all, of the "exceptions, additions and limitations" provided in subsection (d). The taking of the three steps, however, is required only where there is an intervening year between the year of the loss and the year of the deduction. Section 122(b) serves no purpose whatsoever except to determine the amount of the loss which was used up in the intervening year and how much, therefore, remains to be carried over to the taxable year in question. If, as in the instant case, there is merely a carry-over from one year to the next, section 122(b) has no practical application and the net operating loss automatically becomes the net operating loss deduction, subject only to the additional adjustments required in subsection (c). If, on the other hand, we

* In this footnote, the respondent points out that the excess profits tax under subchapter E of the Internal Revenue Code was not allowable as a deduction in computing net income for taxable years beginning in 1942 and thereafter (section 23(c)(1)(B) of the Internal Revenue Code as amended by section 105(c)(1) of the Revenue Act of 1942). A deduction was allowed for such excess profits taxes for taxable years beginning in 1941 (section 23(c)(1)(B) and section 23(c)(2) of the Internal Revenue Code as amended by section 202(a) of the Revenue Act of 1941). However, as in the case of taxable years beginning in 1942 and thereafter, the excess profits tax under subchapter E of the Internal Revenue Code was not deductible in computing net income for taxable years beginning in 1940 (section 23(c)(1) of the Internal Revenue Code as amended by section 500 of the Second Revenue Act of 1940).

have an intervening taxable year, the question is different. If we assume that the three years 1939, 1940 and 1941 referred to in the Committee Report are involved, we have the following situation:

(1) We must first compute the amount of the net operating loss for 1939. The respondent will necessarily argue, as he does in the instant case, that the excess of deductions over the gross income for 1939 must be computed under the law applicable to 1939, a question not involved in this case. He will then argue that the exceptions and limitations provided in subsection (d) must also be computed under the law applicable to 1939, and not for the year 1941, the year for which the deduction is being computed.

(2) The next step will be the computation of the net operating loss carry-over under section 122(b). This will involve a consideration of the net income for 1940 with the exceptions and limitations of subsection (d) therein required, which may result in a decrease in the amount to be carried over to 1941, depending upon whether 1940 resulted in a profit or a loss. We are, therefore, faced with the same problem initially encountered for the year 1939. The income and the deductions for 1940 must be computed under either the 1940 or 1941 law. The exceptions and limitations must also be computed under the 1940 or the 1941 law. This is the point which the respondent has carefully tried to avoid committing himself on in his brief. The reason obviously is that if he admits that the 1941 law controls in making the adjustments in the 1940 income, his position would be completely inconsistent with his position for 1939, and there is no basis in the statute or reason for the inconsistency. On the other hand, he apparently realizes that if he argues that the law applicable to 1940 controls, he is taking a position equally as inconsistent with the statements of the Senate Finance Committee.

(3) The third step will be the computation of the net operating loss deduction again involving an adjustment for exceptions and limitations under section 122(d).

What the respondent's position actually is is difficult to determine from his brief. On page 39, he says: "The first step, on the one hand, and the second and third, on the other, are normally controlled by the law of different years." This seems to say that the second and third steps will be controlled by the law of the same year. Yet, the language on page 40 in footnote 29 seems to say that the adjustment of the intervening year will be determined under the law applicable to the intervening year. To create still greater confusion, the respondent says in the last paragraph of footnote 37 on page 56: "If this is so, it is because the new Sections 122 (b) and (c) expressly control net operating loss carry-overs to, and net operating ~~loss deductions~~ in, 1941, and in that connection determine the extent to which a prior net operating loss, which is to be carried to 1941, may be offset in 1940." The last quoted statement adopts completely what the Senate Finance Committee said and at least seems to be inconsistent with the statement in footnote 29, page 40 of respondent's brief. Section 122(b) applies only to the adjustments for the intervening year. The term "carry-over" is a term of art which is defined in section 122(b). When the Senate Finance Committee stated that a carry-over to the year 1941 would be computed under a statute applicable only to 1941 and subsequent years, it was clearly stating that the amount of the carry-over from 1940 would be computed under the law applicable to 1941.

The respondent specifically says that the laws applicable to 1941 and not prior thereto "determine the extent to which a prior net operating loss, which is to be carried to 1941, may be offset in 1940". If this means, as it seems to mean and as the Committee Report stated, that section

122(d) as it existed in 1941 controls the "exceptions, additions and limitations" to be made in the 1940 income in determining the amount of the carry-over, what possible basis can there be for arguing at the same time that section 122(d), as it existed in 1941, does not apply in determining the exceptions and limitations which must be made in the 1939 income to determine the net operating loss for that year?

If the respondent's position is not as stated on pages 29 and 30 of petitioner's brief, but which respondent disclaims in footnote 31, page 41, of his brief, he should state with more exactness what his position is. If his position is not that which the petitioner ascribed to him, then we submit that there is a fatal inconsistency between his proposed method of computing a "net operating loss" and a "net operating loss carry-over" which cannot be justified on any basis of statutory construction, principle or reason.

IX.

The Tax Court of the United States has not rejected the *Moore* case.

The respondent, at several points in his brief (Resp. Br., p. 14, footnote 1; p. 64 and footnote 43), has pointed out that the *Moore, Inc.* case was not reviewed by the full Tax Court, whereas, the instant case was so reviewed and only Judge LEECH who wrote the opinion in the *Moore, Inc.* case dissented. The inference which these statements are apparently intended to create is that 15 of the 16 Tax Court Judges do not accept the decision in the *Moore, Inc.* case or the reasoning upon which it is based. We submit that any such inference would be entirely unwarranted. The majority of the Tax Court, in the instant case, gave no indication

that they did not agree that the provisions of section 122(d), as they existed in 1942, were applicable in determining the adjustments to be made in arriving at the amount of the net operating loss. They apparently were misled into believing that a different issue was here involved because there also was an amendment to section 23(g), although the respondent now seems to admit that that fact does not create a different issue. The majority of the Tax Court in *Community Public Service Co.* v. *Com'r* (12 T. C. 893) cited the *Moore, Inc.* case with approval. The three dissenting Judges did not base their opinion on the ground that the *Moore, Inc.* case was incorrectly decided, but on the ground that the *Moore, Inc.* case "involved an entirely different statute" and "I do not think it is in point here". *Community Public Service Co.* v. *Com'r* involved the question as to whether the taxpayer's "unused excess profits credit" for prior years should be computed upon an entirely different basis than was provided by the law applicable to the determination of tax liability for such prior years. The question in that case is, therefore, more analogous to the question as to whether the petitioner's income and deductions for 1941 should be computed under the 1941 or 1942 law, a question not involved here, rather than the question actually involved in this case, which is whether in computing the deduction for 1942, the petitioner's loss for 1941 should be subjected to the adjustments required by the 1942 law, the law granting the deduction.

The decision of the Tax Court in *Cambria Collieries Co.* v. *Com'r* (10 T. C. 1172) was not stated to be, and in fact is not, inconsistent with the *Moore, Inc.* case. That case involved a carry back and not a carry over. In addition, it involved the question of a deduction allowed under one law and not the other. It did not involve the question of an adjustment required under section 122(d).

X.

Section 710(c)(1) of the Internal Revenue Code does not support the respondent's position.

On page 34 of his brief the respondent argues that if Congress had intended that the "exceptions, additions and limitations" of section 122(d), as it existed in 1942, should apply, it should have specifically so provided. By way of analogy, reference is made to section 202(e) of the Revenue Act of 1941 which amended Code section 710(c)(1). Prior to amendment, Code section 710(c)(1) provided:

> The term "unused excess profits tax credit" means the excess, if any, of the excess profits credit for any taxable year beginning after December 31, 1939, over the excess profits net income for such taxable year, *computed on the basis of the excess profits credit applicable to such taxable year.* (Italics supplied.)

Section 202(e) of the Revenue Act of 1941 provided:

> Section 710(c)(1) (defining the unused excess-profits credit) is amended by adding at the end thereof a new sentence to read as follows:
>
> "For such purpose the excess-profits credit and the excess-profits net income for any taxable year beginning in 1940 shall be computed under the law applicable to taxable years beginning in 1941."

Thus the amendment to section 710(c)(1) to provide that the credit for 1940 should be computed under the law applicable to the year 1941, was not in pursuance of any general plan of providing in the statute for an explicit statement to that effect when it was intended that the law of the current year should govern. The exception was necessary because the original section of the Code itself already contained an exception, that is, that the credit was to be com-

puted for any taxable year "on the basis of the excess profits credit applicable to such taxable year". The provisions of section 710(c)(1) are therefore entirely consistent with the petitioner's position, *i. e.*, where Congress intends that the law of the earlier year shall apply, it specifically so provides. This is what Congress did in Code section 710(c)(1) as originally enacted and the amendment effected by section 202(c) of the Revenue Act of 1941 was for the purpose of providing for an exception for a single year only, 1940.

The one question which must be answered in this case is whether section 122(d) as it existed in 1942, or as it existed in 1941, determines the "exceptions, additions and limitations" required to be made in determining the amount of the net operating loss for 1941. A decision for the petitioner or for the respondent will follow automatically when that single question has been answered. The respondent accuses the petitioner of having assumed a favorable answer to that question and then built an argument thereon. The petitioner may reply that much of the respondent's argument is similarly premised upon the assumption of an answer favorable to him of that question. The petitioner concedes that its whole argument fails if the foregoing question is answered against it. We wish to point out, however, that the arguments of the respondent which sound plausible, having assumed his answer to the basic question, likewise fall completely if that question is answered otherwise. We wish to point out again that the respondent's position, upon which his whole argument is based, that section 122(d) as it existed in 1941 is determinative, is necessarily either inconsistent and in conflict with his position as to the version of section 122(d) which is applicable in determining the adjustments to be made in the income of an intervening

year, or inconsistent and in conflict with the statements of the Senate Finance Committee in connection with section 153 of the Revenue Act of 1942.

On page 44 of his brief, the respondent argues that the construction urged by the petitioner might result in a net operating loss carry-over from a year in which the taxpayer had net income under the law controlling that year, and for which it had to pay a tax, and, therefore, had no actual loss at all. The respondent then quotes from a report of twenty-five years ago on the Revenue Act of 1924 to argue that such a result would be "anomalous". The petitioner does not know whether a case will ever arise in which the application of its theory might result in a net operating loss carry-over from a year in which there was net income and a tax was paid. The petitioner does wish to point out that, entirely without regard to whether its position or the respondent's position is sustained, it is possible that a taxpayer may have income for a year and pay a tax thereon and, at the same time, have a net operating loss for that year. See the example set forth in the footnote on page 19 of petitioner's brief in support of its petition for writ of certiorari. This results from the unambiguous provision of section 122(d). as it presently exists, which permits the full amount of long-term capital losses to be offset against short-term capital gains, although in the case of individuals, long-term capital losses may be taken into account only to the extent of 50 per centum thereof in the computation of the tax liability for the year in which such losses occur. Furthermore, the provisions of section 122 require an adjustment for the "exceptions, additions and limitations" provided in subsection (d), and thereby provide that a deduction for excess profits taxes under section 122(d)(6) shall be allowed in the computation of the net operating loss although it was not permitted in computing

the net income for the year. Apparently, the Congress of 1942 and subsequent Congresses have not shared the views expressed by the Ways and Means Committee in 1924. Congress has now provided at least two ways in which a taxpayer may have a net operating loss although it had taxable income and paid an income tax for the same year, one through the different treatment of long-term capital losses, and the other, through the payment of an excess profits tax in the year, which is an additional deduction allowed in computing the net operating loss but not allowed in computing the net income for the year.

The respondent admits that under petitioner's theory the petitioner "will not 'gain an extra deduction'" (Resp. Br., p. 53). The respondent argues strenuously that the whole net loss theory is based upon "the prime purpose of Congress to secure approximate tax equality (a) between businesses with stable profits and those with fluctuating earnings, and (b) among taxpayers suffering losses in some years and earning profits in others" (Resp. Br., p. 45). Yet, the respondent's theory achieves exactly the opposite result. The respondent has presented not a single reason in logic why the deduction should not be allowed to the petitioner. His entire argument is based upon the possible, but improbable, results in a quite different case involving the meaning of "by this chapter" in the phrase "excess of deductions allowed by this chapter over the gross income", and not dependent upon the principles here involved.

JAMES O. WYNN,
N. BARR MILLER,
Attorneys for Petitioner,
Investment Building,
Washington 5, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 751

REO MOTORS, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The petition for a writ of certiorari asserts that the present decision is wrong and raises an important question in the law of taxation, and there also is alleged a conflict with the decision of the Court of Appeals for the Fifth Circuit in *Commissioner* v. *Moore, Inc.*, 151 F. 2d 527, affirming 4 T. C. 404. We believe that the decision is clearly correct, but we agree with petitioner that the question is important and that a substantial conflict does exist, and for those reasons we do not oppose the granting of the petition in this case. However, since each of the conflicting decisions affirms a ruling of the Tax Court, it seems appropriate to add a few words on the nature of the asserted conflict.

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The Tax Court's decision in the *Moore* case was rendered by a single judge, whereas the present case was decided by the full Tax Court, over the dissent of the single judge who had rendered the earlier opinion. True, the majority herein attempted to distinguish its prior adverse decision in the *Moore* case, but the dissenting judge relied solely (R. 200) upon his prior opinion in the *Moore* case. The ground of the supposed distinction, which was not foreshadowed in the *Moore* opinion, was that the earlier case involved a 1942 amendment directly altering a provision of Section 122 (d) (4) of the Internal Revenue Code (governing the net operating loss deduction carry-over allowable for the 1942 taxable year), while the instant case concerns a 1942 amendment which did not change the provisions of Section 122 itself but rather altered another Code provision (Section 23 (g)) defining certain terms ("capital losses" and "capital assets") used in Section 122 (d) (4) (R. 199–200). In *Blackhawk-Perry Corp.* v. *Commissioner*, decided November 19, 1948 (1948 P-H T. C. Memorandum Decisions ¶48,245, now pending on taxpayer's appeal in the Court of Appeals for the Eighth Circuit), the Tax Court similarly distinguished the *Moore* case.

In brief and argument in the Court of Appeals in this case, the Government conceded that this distinction is not valid and that the present case and the *Moore* decision cannot properly stand

together (R. 220). The court below, noting that it was not bound by the Fifth Circuit's conclusions, found it unnecessary to determine whether the same or a different issue was presented and decided in the *Moore* case because it held that the Tax Court's present result was correct in either event (R. 220). And there is added to this implicit recognition of a conflict the fact that the explicit rationale of the opinion below cannot be squared with that expressed by the Fifth Circuit.

It may be, of course, that the Fifth Circuit would in future cases accept the unsubstantial distinction made here by the Tax Court, but to do so it seems to us that it would either have to overrule its *Moore* decision or discard the entire reasoning upon which it reached its independent conclusion that the Tax Court had properly construed the statute. In these circumstances, we believe that there is presented a conflict of Circuits warranting resolution by this Court.

Accordingly, the respondent, though believing that the decision in the present case is correct, does not oppose the granting of the petition for a writ of certiorari.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

MAY 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 59

REO MOTORS, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 191–200) are reported at 9 T. C. 314. The opinion of the Court of Appeals (R. 216–223) is reported at 170 F. 2d 1001.

JURISDICTION

The judgment of the Court of Appeals was entered on November 29, 1948 (R. 216), and rehearing was denied February 1, 1949 (R. 235). The petition for a writ of certiorari was filed April 25, 1949, and was granted June 6, 1949

(R 235). The jurisdiction of this Court rests upon 28 U. S. C., Sec. 1254.

QUESTION PRESENTED

Whether Section 23 (g) of the Internal Revenue Code (governing deduction for capital losses) as applicable to the year 1941, or that section as amended and applicable to the year 1942, should be applied in computing net operating loss for 1941 which may be carried over to, and deducted in, 1942 under Sections 23 (s) and 122 of the Code.

STATUTES INVOLVED

The pertinent statutes are set forth in the Appendix, *infra*, pp. 68–79.

STATEMENT

The facts are undisputed, being reflected in a stipulation of facts and exhibits. (R. 192.) The pertinent facts were summarized by the Tax Court (R. 192–195) and may be restated as follows:

Taxpayer, a corporation, was organized on January 2, 1940, under the laws of the State of Michigan. It is engaged in the business of manufacturing motor vehicles and has its principal office at 1331 South Washington Avenue, Lansing, Michigan. Its income and declared value excess profits tax returns and excess profits tax return for the calendar year 1942 were prepared on an accrual basis. (R. 192.)

In January, 1940, taxpayer acquired all the shares of stock of Reo Sales Corporation (here-

inafter referred to as "Reo Sales"), a sales agent for taxpayer. Thereafter, until the dissolution of Reo Sales, all of its stock was owned directly by taxpayer. Taxpayer's adjusted basis for determining gain or loss from the sale or other disposition of such stock was $1,551,902.79. (R. 192.)

More than 90 percent of the aggregate of the gross income of Reo Sales for all taxable years was from sources other than royalties, rents, dividends, interest, annuities, or gains from sales or exchange of stocks and securities. (R. 192.)

During the calendar year 1941, Reo Sales was dissolved and as of February 1, 1941, all of its assets, subject to all its liabilities, were transferred to taxpayer. On February 1, 1941, Reo Sales was indebted to taxpayer in the sum of $1,263,707.57, while the net value of the assets taxpayer received upon the dissolution of Reo Sales was $1,048,219.95. (R. 193.)

Taxpayer received no compensation for any loss sustained by it on the dissolution of Reo Sales. For the difference between Reo Sales' indebtedness to taxpayer and the net value of the assets taxpayer received upon the dissolution of Reo Sales, amounting to $215,487.62, taxpayer claimed and received a bad debt deduction in 1941. Taxpayer's loss with respect to the stock of Reo Sales (which had an adjusted basis of $1,551,902.79) was a long-term capital loss under the law applicable to the taxable year 1941. It

was so claimed by taxpayer in its 1941 return and the deduction was allowed by the Commissioner. (R. 193.)

Taxpayer's gross income for 1941 was $2,573,259.89. Including the bad debt deduction of $215,487.62 referred to above, but not including any deduction with respect to the stock of Reo Sales, any deduction for depletion, any net operating loss deduction, or any deduction for losses from sales or exchanges of capital assets, the deductions allowable to taxpayer for 1941 by chapter 1 of the Internal Revenue Code amounted to $2,215,727.08, which is less than taxpayer's 1941 gross income. (R. 193.) With the addition of the $1,551,902.79 loss in respect of the Reo Sales stock, taxpayer would have had a net loss for 1941.

During 1941, taxpayer realized no gain from the sale or exchange of capital assets, received no interest which was wholly exempt from the tax imposed by chapter 1 of the Code, and did not pay or accrue any tax imposed by subchapter E of chapter 2 of the Code (the excess profits tax). (R. 193.)

For the following year, the taxable year 1942, taxpayer's net income was $1,926,136.34, computed without allowance of a net operating loss deduction and without any depletion deduction. Taxpayer's normal tax net income for 1942 was $1,926,102.34 computed without any net operating

loss deduction and without the credit provided in Section 26 (e) of the Internal Revenue Code. For the year 1942, taxpayer received no interest exempt from the taxes imposed by chapter 1 of the Internal Revenue Code, received no interest for which a credit was provided under Section 26 (a) of the Code, and realized no gains and sustained no losses from sales or exchanges of capita assets. (R. 193–194.)

In computing taxpayer's net income for 1942, the Commissioner did not allow any net operating loss deduction, as claimed by petitioner (R. 194.) In his letter accompanying the deficiency notice he explained this action as follows (R. 194–195):

> The net loss for the year 1941 resulted chiefly from the deduction of an amount of $1,552,248.16 from the worthlessness in 1941 of your investment in the stock of a subsidiary. This stock was a capital asset under the Internal Revenue Code for 1941 and constituted a capital loss in 1941 and was allowed as a long term capital loss, deductible without limitation as claimed in your return for the year 1941. In computing the amount of the net operating loss deduction claimed in 1942 you included therein as part of the net operating loss carry-over from 1941 the loss of $1,552,-248.16 sustained by you in 1941 on the stock of the subsidiary. You contend that under Section 23 (g) (4) of the Internal Revenue

> *Code as amended by the Revenue Act of 1942* the loss on dissolution in 1941 of your wholly owned subsidiary company is not a capital loss for the purpose of determining the 1941 net operating loss deduction carried over to 1942.
>
> It is held that the net operating loss deduction allowable for the year 1942 is to be determined under the Internal Revenue Code as it existed in the year in which the net operating loss was sustained. Therefore, under the Internal Revenue Code in effect for the year 1941, the capital loss of $1,552,248.16 sustained upon dissolution of your subsidiary company is not allowable as a deduction in determining the net operating loss carry-over to the year 1942 [Italics supplied].

This determination of the Commissioner was sustained by the Tax Court (R. 195–200), and the decision of the Tax Court was affirmed on appeal by the Court of Appeals for the Sixth Circuit (R. 216–223).

SUMMARY OF ARGUMENT

A. Section 23 (s) of the Internal Revenue Code authorizes the deduction from gross income of the net operating loss deduction as computed under Section 122 of the Code. Under Section 122, the net operating loss deduction for the taxable year consists of the sum of the carry-backs and carry-overs to that year of net operating losses of other years, with certain adustments. The net

operating loss of any given year consists of the excess of deductions for that year over gross income for that year, with certain exceptions and limitations. In general, such a net operating loss is first carried back to the two preceding taxable years in succession (but never beyond 1941), and offset against income in those years; any remainder is then carried over to the two succeeding years and similarly offset. The entire mechanism thus consists of three parts, which are separate and distinct, and, as we shall show, are generally governed by the laws of different years: (a) the "net operating loss" sustained in a given year; (b) "the net operating loss carry-back" and "carry-over" which transfer the net operating loss to other years; and (c) the "net operating loss deduction" which constitutes the mode of actual deduction of a loss in another year. Congress' general purpose in adopting this device was to achieve approximate equality in the incidence of income taxation as between businesses with steady earnings and those with alternating profits and losses; relief is granted the taxpayer with widely fluctuating earnings by requiring, in effect, the payment of the tax only on the average of income over a period of years.

B. Taxpayer claims a net operating loss deduction *in 1942* based upon the contention that it had a net operating loss *for 1941*. It had a net operating loss for 1941 only if the loss it sustained in 1941 on the liquidation of Reo Sales

was an ordinary, rather than a capital, loss. The loss was an ordinary one under the law applicable to 1942, because paragraph (4) (as added to the Code by the Revenue Act of 1942) of Section 23 (g) (governing the deduction for capital losses) made it so, but it was admittedly a capital loss under the previous law applicable in and to 1941. Taxpayer contends that the amended Section 23 (g) (4), concededly not applicable in computing tax liability for 1941, is nevertheless applicable in computing net operating loss for 1941, for the purpose of a carry-over net operating loss deduction in 1942. This contention is similar to that made by the taxpayer in *Commissioner* v. *Moore, Inc.*, 151 F. 2d 527 (C. A. 5) (affirming 4 T. C. 404), and there upheld in a decision which we believe to be erroneous and in flat conflict with the holding below. The full Tax Court, in deciding the instant case, attempted to distinguish its earlier decision (which was by a single judge), but the distinction seems to us entirely unsubstantial, as the Tax Court judge who decided the *Moore* case indicated by dissenting here.

C. Under Section 101 of the 1942 Act, the amended Section 23 (g) (4) is applicable "only with respect to" taxable years beginning after December 31, 1941, and therefore is *not* applicable "with respect to" 1941. But it is clearly "with respect to" 1941 that taxpayer seeks to apply Section 23 (g) (4), since the computation

of net operating loss for 1941 is involved. Accordingly, as the court below held, Section 101 of the 1942 Act is a complete answer to taxpayer's argument. Contrary to its contention, the fact that the case concerns the computation of tax liability for 1942, rather than for 1941, cannot serve to make the amendment applicable in the computation of net operating loss for 1941, and thus "with respect to" 1941, when Congress has provided that the amendment governs only "with respect to" 1942 and following years. Nor is taxpayer's position supported by the fact that the Revenue Acts from 1924 to 1932, in allowing a similar net loss deduction, expressly provided that net loss for an earlier year should be computed in accordance with the law applicable to that earlier year. Section 101 of the 1942 Act has the same effect as to the amended Section 23 (g) (4) on which taxpayer relies. The difference in form is explainable by the fact that the pre-Code revenue acts were all self-contained, and effective only until a new act was adopted, after which the law of a prior year could not control for any purpose unless it was expressly so provided. The Internal Revenue Code, on the other hand, has continuous application and, upon amendment, old provisions remain in effect for past years, unless provision is made to the contrary.

D. Moreover, Section 122—the portion of the Code governing net operating loss, carry-overs

and carry-backs, and the net operating loss deduction—reflects the intention of Congress that, as under the earlier Revenue Acts allowing a net loss deduction, net operating loss for a given year must be computed according to the law applicable to the year in which the loss is sustained. Section 122 (a) defines "net operating loss" as meaning the excess of deductions "allowed by this chapter" over the gross income, with certain exceptions and limitations provided in subsection (d). The deductions "allowed by this chapter" for a given year are the deductions allowed under the law applicable to that year for the purpose of computing tax liability for that year. The exceptions and limitations provided in subsection (d) are, of course, applicable to any given year according to whether they have been made applicable to that year. Thus, the very terms of Section 122 (a) require the computation of net operating loss for a given year to be computed according to the law applicable in the computation of tax liability for that year (with the exceptions and limitations provided in subsection (d) and applicable to that year), and there is no basis for the decisive distinction which taxpayer attempts to draw between the law applicable in computing tax liability for 1941 and the law applicable in computing net operating loss for 1941 (which is to be deducted in 1942). Net operating loss is computed under the law governing the year of loss, although the law of prior or

later years will determine the extent to which this net operating loss, if any, is to be carried-over or carried-back, and the extent to which it may be deducted in another taxable year.

The terms of Section 122, and its legislative history, likewise prove that the net operating loss will be a fixed amount, not subject to annual fluctuation. Under taxpayer's contention, the amount of net operating loss for a given year would have to be computed according to the law applicable to the year or years in which a taxpayer seeks to carry-over or carry-back net operating loss of another year and obtain a deduction therefor. The amount of net operating loss for a given year could therefore vary from year to year, depending upon the law applicable to each of the years to which net operating loss is sought to be carried-over or back, and deducted. This lack of a fixed amount of net operating loss for a given year would produce results in conflict with the Congressional intent and the structure of the net operating loss provisions.

In addition, the Congressional purpose in adopting this mechanism was, as stated above, to permit taxpayers having an excess of deductions over gross income in one or more years to offset that excess, or loss, against net income of other years, and thereby to grant relief from fluctuating earnings by requiring the payment of tax only on the average of income over a span of years. On petitioner's theory, this purpose of

achieving approximate equality between businesses with steady profits and those with fluctuating earnings cannot be effectuated. In some cases, a taxpayer would receive an extra deduction in a subsequent or prior year which other taxpayers operating without loss would never receive. In other cases, a taxpayer who actually had a net operating loss in a given year would not be able to carry-over or carry-back that loss to another year and receive a deduction therefor. On the other hand, when net operating loss for a given year is computed in accordance with the law applicable to that given year, and the deductions taken into account in computing net operating loss for the given year are the deductions allowed under the law applicable to that year, net operating loss for the given year consists of a fixed amount susceptible to offset against net income of other years in effectuation of the Congressional purpose to attain general equality of income tax incidence.

Petitioner's arguments for the application of the 1942 change in Section 23 (g) in computing net operating loss for 1941 all disregard the basic structure of the net operating loss provisions of the Code, as well as the distinction between the computation of net operating loss itself and the determination of the extent to which that loss is to be carried-over (or carried-back) and deducted in another year. Moreover, taxpayer's arguments for reversal build in large measure

upon the foundation-premise that the decision in *Commissioner* v. *Moore, Inc., supra,* p. 8, is correct, a conclusion which can only be accepted after the conflicting decision below is shown to be wrong.

ARGUMENT

Taxpayer's net operating loss for 1941 must be computed according to the law applicable to 1941, and, accordingly, taxpayer had no 1941 net operating loss which it could carry over to and deduct in 1942 as a net operating loss deduction under sections 23 (s) and 122 of the Internal Revenue Code

For several years, the Internal Revenue Code has permitted taxpayers computing their income tax for a given year to carry over, in the form of a deduction from that year's gross income, a net operating loss suffered in the prior year or two, and also to carry back, in the same form of a deduction from the taxable year's gross income, a net operating loss incurred in a subsequent year. In this way, Congress has sought to equalize the incidence of income taxation as between businesses with stable incomes and those with alternating profits and losses; relief is granted to the taxpayer with widely fluctuating earnings by requiring, in effect, the payment of the tax only on the average of income over a period of years.

The general question presented here is whether this net operating loss—which is carried over to a later year and then deducted, or, as the case may be, carried back and deducted in an earlier year—is normally to be computed under the terms

of the tax statutes in effect at the time the alleged loss was actually incurred, or pursuant to the legislation in effect at the later (or earlier) time to which the loss is carried and taken as a deduction. In this case, the Tax Court and the Court of Appeals for the Sixth Circuit have held that petitioner's net operating loss for 1941 (if any) is to be computed under 1941 law, rather than under the statutes applicable to 1942 when the deduction was claimed. Petitioner and the Fifth Circuit, in a substantially identical case (*Commissioner* v. *Moore, Inc.*, 151 F. 2d 527, affirming 4 T. C. 404), take the other view.[1]

We agree with the Sixth Circuit and the Tax Court that petitioner's net operating loss, which is sought to be carried-over to 1942, must be calculated in accordance with the law applicable to the year in which the loss, if any, was suffered, and not that governing the year in which it is ultimately deducted. This position is compelled, in our view, by the terms, purpose, structure, and

[1] The Tax Court, in its opinion in the instant case, attempted to distinguish the *Moore case*, rather than reject it, but, as we point out below (*infra*, pp. 64–66), we believe the distinction to be entirely unsubstantial, and that the present case cannot stand together with *Moore*. It is also true that the Tax Court's *Moore* opinion adopted the present petitioner's view, but it is appropriate to note that the *Moore* decision was rendered by a single one of the Tax Court's sixteen judges, and was not reviewed by the full court. In contrast, the Tax Court's present opinion was reviewed and accepted by the full court, with a sole dissent from Leech J., who believed that the matter was controlled by the *Moore* case which he had decided.

history of the carry-over and carry-back provisions of the Internal Revenue Code. And we are not moved in our construction of the statutes by a desire to increase the Federal Government's revenue. For there is no way of telling whether the Commissioner's interpretation will bring greater sums to the Treasury than petitioner's; in some cases the tax will be larger if computed according to the provisions in effect when the loss was suffered, but in others it will be much less than if later (or earlier) provisions are used. Cf. *Cambria Collieries Co.* v. *Commissioner*, 10 T. C. 1172.

A. The general operation and purposes of the net operating loss provisions of the Code

1. The net operating loss provisions of the Internal Revenue Code (Section 122, Appendix, *infra*, pp. 70–74) operate, in general, in the following way. Section 122 (a) defines a net operating loss as the excess of the deductions normally allowed by the Code's income tax chapter over gross income, with certain specified adjustments. Such a net operating loss may be carried back (under subsections (b) and (c)) to the two preceding taxable years and may also be carried forward to the two succeeding years, and in effect used to offset income in those prior and subsequent tax years. The net operating loss is first carried back to the second preceding taxable year and used to offset whatever income the taxpayer had in that year. Any remainder of the

net operating loss is then carried back to the first preceding taxable year and employed to offset income in that year. The part of the loss not used up in the first and second preceding taxable years may then be carried over to the first succeeding tax year and then to the second year. For example, a net operating loss sustained in 1943 is first carried back to 1941; then it is carried back to 1942; third, it is carried over to 1944; and, last, it is carried over to 1945. No net operating loss, however, may be carried back to a taxable year which began prior to January 1, 1941. Petitioner's asserted loss for 1941 could, therefore, not be carried back to 1939 or 1940, but would first be carried over to 1942.

Thus, the net operating loss mechanism may be divided into three parts. There is, first, the *net operating loss* sustained in a given year. Second, there is the *net operating loss carry-back* and *carry-over;* the carry-back and the carry-over are the means by which the net operating loss of one year is carried to a prior or subsequent year, and made available in the prior or subsequent year as an offset against income. Lastly, there is the *net operating loss deduction,* which is the sum of the carry-backs and carry-overs to a given year, with certain adjustments. The net operating loss *deduction* is the vehicle by which net operating losses incurred in prior or later years, and carried to the given year by means of carry-overs and

carry-backs, are directly taken into account in determining the net income for the given year.

2. The general purpose of the net operating loss provisions is to permit the averaging of income and losses over a five-year period, and thereby afford tax relief against fluctuating earnings. Through the use of this device a tax is paid only on the net operating income spread over the entire period. See *Dalton* v. *Bowers*, 287 U. S. 404, 408. In 1939, Congress readopted carry-overs, after a six- or seven-year interval, with this end specifically in view.[2] In 1942, the Code was amended to provide for the carry-back, as distinguished from the carry-over. S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 51–52 (1942–2 Cum. Bull. 504, 546–547) reflects that a main purpose of the carry-back provisions, under which a 2-year carry-back was allowed, was to afford the same relief in periods of declining profits as was afforded for periods of increasing profits under the carry-over provisions.[3]

Stated somewhat differently, the purpose of Congress was to permit a taxpayer without suffi-

[2] The House Committee on Ways and Means stated (H. Rep. No. 855, 76th Cong., 1st Sess., p. 9 (1939–2 Com. Bull. 504): "As a result of the elimination of this carry-over, a business with alternating profit and loss is required to pay higher taxes over a period of years than a business with stable profits, although the average income of the two firms is equal. New enterprises and capital-goods industries are especially subject to wide fluctuation in earning * * *."

See also *infra*, fn. 34, pp. 46–47, for further excerpts from the Committee's report.

[3] See *infra*, fn. 34, pp. 46–47.

cient gross income in a given taxable year to take advantage of all its allowable deductions *for that year,* to obtain the benefit of the excess of *these* deductions in a prior or subsequent year. By this means, general equality in tax payments was to be secured between businesses with stable earnings and those with alternating profits and losses, since the former were normally able to get the benefit of their deductions each year.[4]

B. Taxpayer's claim:—That a 1942 amendment to Section 23 (g) of the Code (governing deduction for capital losses) applies in determining the net operating loss for 1941 which is carried over to 1942

1. In outline, taxpayer's particular claim for a net operating loss deduction in 1942 is this:— Under the statutory provisions in effect in 1941, Reo Motors admittedly did not have a net operating loss, because its loss on the liquidation of its subsidiary was then characterized as a capital loss which taxpayer could not deduct from gross income in computing net operating loss; if the loss were deductible, a clear net operating loss would have resulted. In 1942, Congress amended the Internal Revenue Code to remove similar stock losses on the liquidation of a sub-

[4] On the purpose, history, and general operation of the net operating loss provisions of the Code, see L. Raum, *Carry-overs and Carry-backs of Net Operating Losses and Unused Excess Profits Credits*, Part 16 of Practical Aspects of Federal Taxation (The Bureau of National Affairs, 1946); L. Raum, *Carry-overs and Carry-backs in Connection with the Liquidation or Sale of a Business*, (1949) 49 Col. L. Rev. 49, 49–54.

sidiary from the capital loss category, thus permitting a taxpayer to deduct such a loss from gross income in computing its net operating loss. Because of this 1942 amendment, petitioner insists that, in the course of computing its 1942 tax liability, it may establish for the first time a 1941 net operating loss, by deducting the stock loss, thus retroactively obtaining a net operating loss for 1941, which may then be carried over to 1942, and deducted from its 1942 gross income.

To spell out the claim more in detail:—Taxpayer seeks a deduction from gross income for the taxable year 1942 under Section 23 (s) of the Internal Revenue Code (Appendix, *infra*, p. 69) which authorizes the deduction of "the net operating loss deduction computed under section 122." Section 122 (c) (Appendix, *infra*, pp. 71–2) provides that—

> The amount of the net operating loss deduction shall be the aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) exceeds, * * * in the case of a corporation, the normal-tax net income (computed without such deduction * * *)

Net operating loss carry-backs and carry-overs are authorized by Section 122 (b) (Appendix, *infra*, pp. 70–71) and consist, as we have pointed out, of a taxpayer's net operating losses for cer-

tain prior and subsequent years which are then carried back or carried forward to another year and offset against income. The net operating loss deduction is the aggregate of the pertinent carry-overs and carry-backs to the particular taxable year. *Supra*, pp. 15–17.

Taxpayer's assertion of a net operating loss deduction in 1942 is based solely upon the contention that it had a net operating loss carry-over to 1942, consisting of a net operating loss in 1941. Whether taxpayer in fact had a net operating loss in 1941 turns upon the provisions of Section 122 (a) (Appendix, *infra*, p. 70) which defined the term "net operating loss" to mean—

> the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).[5]

Because of the adjustments provided in subsection (d), the fact that a taxpayer's deductions exceed gross income for a given year, with a resulting net loss, does not mean necessarily that the taxpayer has a "net operating loss" for that year within the meaning of Section 122 (a).

In the present case, the pertinent exception and limitation provided in subsection (d) is that contained in paragraph (4). See Section 122 (d)

[5] Section 105 (e) (3) (A) of the Revenue Act of 1942 (Appendix, *infra*, p. 75) amended Section 122 (a) of the Code to read "with the exceptions, *additions*, and limitations provided in subsection (d)" (italics added). This amendment has no relevance to the issues presented in this case.

(4), Appendix, *infra*, p. 73. That paragraph provided, in 1941, that long-term capital losses and short-term capital losses were deductible from gross income only to the extent, respectively, of includible long-term capital gains and short-term capital gains.[6] Taxpayer admittedly had no long-term or short-term capital gains in 1941. Hence, in computing its "net operating loss" for 1941, it cannot deduct any capital loss from its 1941 gross income.[7] And the $1,551,902.79 loss which peti-

[6] This provision illustrates that all deductions allowable in computing net income are not allowable for the purpose of computing net operating loss, and that a taxpayer having a *net loss* may not necessarily have a *net operating loss* subject to carry-over and deduction in a following year. Section 122 (d) (4) limits the deduction of long-term capital losses for the purpose of computing net operating loss. Section 117 (d) (Appendix, *infra*, p. 69), on the other hand, placed no restriction on the deduction of long-term capital gains for the purpose of computing net income subject to tax in 1941. See *infra*, pp. 38–39.

[7] This would also clearly be true if one were to apply paragraph (4), as amended effective only with respect to taxable years beginning after December 31, 1941 (Appendix, *infra*, p. 73), since that amendment merely did away with the separate treatment of short-term and long-term capital losses, making losses of either type deductible to the extent of capital gains of either type—of which taxpayer had none. *Supra*, p. 4.

For the purposes of its general argument, petitioner insists that the 1942 amendment to section 122 (d) (4) does apply here. We show below that, on the contrary, this 1942 amendment does not govern in computing net operating loss for 1941, and that petitioner's contention, which is the base for a large part of its argument, is incorrect. *Infra*, pp. 60–66. We also point out that, as stated above, petitioner gets no comfort from the 1942 change in section 122 (d) (4), even if it applies to this case. *Infra*, pp. 62–64.

tioner sustained in 1941, by reason of the fact that the Reo Sales stock it owned became worthless upon the dissolution of Reo Sales in that year, was a long-term capital loss under Section 23 (g) of the Code in effect in 1941 (Appendix, *infra*, p. 68)—a fact which taxpayer has conceded by stipulation. (R. 57–58.) The necessary result is that, if the law applicable to 1941 applies in computing taxpayer's net operating loss for 1941, taxpayer had no 1941 net operating loss to carry over to, and deduct in, 1942 as a net operating loss deduction.[8]

Taxpayer contends, however, that its loss on the Reo Sales stock is to be treated as an ordinary rather than capital loss, despite the law in effect in 1941. If this contention were correct, Section 122 (d) would not preclude the deduction of the loss from 1941 gross income in computing net operating loss for 1941, and the taxpayer would apparently have an excess of deductions over gross income, or a net operating loss, of $1,194,369.98 for 1941, and therefore a net operating loss carry-

[8] The facts bearing on the other exceptions and limitations provided in Section 122 (d) were stipulated (cf. Statement, *supra*, pp. 3–5, with Section 122 (d)) and the only figures to be considered in determining whether taxpayer had a net operating loss in 1941, which it may carry over to and deduct in 1942, are (i) its 1941 gross income of $2,573,259.89, (ii) the $1,551,902.79 loss on the Reo Sales stock, and (iii) its other allowable deductions totalling $2,215,727.08 (R. 57–59). The other deductions of $2,215,727.08 are, of course, less than taxpayer's 1941 gross income of $2,573,259.89, and therefore insufficient to establish a net operating loss.

over of that amount to 1942, which is deductible in 1942 as a net operating loss deduction.[9]

This argument that taxpayer's 1941 loss on its Reo Sales stock is to be considered an ordinary loss in computing net operating loss for 1941 is based upon the fact that the Revenue Act of 1942 (Section 123 (a) (1), Appendix, *infra*, pp. 68–9, 76) amended Section 23 (g) of the Code (deduction of capital losses) by adding a paragraph, number (4), which qualified Section 23 (g) (2) by providing that worthless stock of an affiliated corporation shall not be deemed a capital asset.[10] Reo Sales was admittedly an affiliated corporation within the requirements of this 1942 amendment, and application of the amendment would require the conclusion that taxpayer's 1941 loss on the Reo Sales stock was an ordinary and not a capital loss. It would then follow that the loss could be taken into consideration in the computation of net operating loss for 1941 which could properly be carried over to 1942, *Supra*, pp. 20–22.

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[9] The figure of $1,194,369.98 represents the difference between taxpayer's 1941 gross income of $2,573,259.89 and the combined total of the $1,551,902.79 loss on Reo Sales stock and taxpayer's other deductions of $2,215,727.08. See fn. 8, *supra*.

[10] Section 23 (g) (4) [as added by Section 123 (a) (1) of the 1942 Act] was amended slightly by Section 112 (a) of the Revenue Act of 1943, Appendix, *infra*, p. 79. The amendment was made applicable by Section 112 (c) of the 1943 Act (Appendix, *infra*, p. 79) to taxable years beginning after December 31, 1941, but it is of no importance in the present case.

In exact focus, the question in the case, therefore, is whether the 1942 Section 23 (g) (4) shall be applied in the computation of net operating loss for 1941, which is to be carried over and deducted in 1942. The answer, we believe, must be negative, if one is to follow the available indications of Congressional meaning:—the precise words of the statute, the history and structure of the carry-over provisions, and the plain legislative purpose.

2. Petitioner's claim is substantially the same as that of the taxpayer in *Commissioner* v. *Moore, Inc.*, 151 F. 2d 527 (C. A. 5), affirming 4 T. C. 404, and its arguments follow in large measure those accepted in that case (Pet. Br. 19, 21–2, 26, 31–38). The *Moore* case also involved the limitation contained in Section 122 (d) (4) of the Code with respect to the computation of net operating loss, as does the present case, but in a different way. The taxpayer there had a long-term capital loss of $17,025 and short-term capital gains of $2,844 in 1941. Under Section 122 (d) (4), as it stood in 1941, long-term capital losses were deductible in the computation of net operating loss only to the extent of long-term capital gains, and short-term capital losses were deductible only to the extent of short-term capital gains. Under Section 122 (d) (4) as amended by Section 150 (e) of the 1942 Act (Appendix, infra, p. 73, fn. 5), the

distinction between short-term and long-term capital gains and losses was withdrawn and a capital loss of either type was made deductible to the extent of capital gains of either type. (See fn. 7, *supra* p. 21.) The taxpayer in the *Moore* case contended that the amended Section 122 (d) (4) was applicable in computing net operating loss for 1941 for carry-over purposes to 1942, and, accordingly, that its long-term capital loss of $17,025 could be partially offset against its short-term capital gain of $2,844. As in the instant case, the amendment was applicable only "with respect to" the year 1942 and thereafter, by virtue of Section 101 of the 1942 Act. *Infra,* pp. 26–34; Appendix, *infra,* p. 74. The Tax Court and the Court of Appeals for the Fifth Circuit nevertheless upheld the taxpayer's contention that the amended Section 122 (d) (4) was applicable in the computation of net operating loss for 1941. As indicated in the beginning of our argument (*supra,* p. 14), it is our opinion that the reasoning of the *Moore* decision is flatly in conflict with that of the court below, and should not be followed. The Tax Court attempted to find a verbal distinction between the cases, but, as we shall show, there is no substance to its line of cleavage. *Infra,* pp. 64–66; fn. 1, *supra,* p. 14. The arguments we present here will, therefore, also serve to show the incorrectness of the Fifth Circuit's earlier holding.

C. The Revenue Act of 1942 expressly limits the effect of the 1942 amendment to Section 23 (g) to the 1942 tax year and thereafter, and the amendment therefore does not apply in computing a net operating loss for 1941

1. The court below properly held that Section 101 of the Revenue Act of 1942 (Appendix, *infra,* p. 74) furnishes a complete answer to the question whether the 1942 addition of paragraph (4) to Section 23 (g) is applicable here. (R. 219–220.) Section 101 of the 1942 Act states that—

> Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.

Section 123 (a) (1) of the 1942 Act—the section which added paragraph (4) to Section 23 (g)—contained no express provision relative to the years to which the amendment was applicable. Accordingly, as taxpayer admits (Pet. Br. 10, 35), Section 23 (g) (4) is "applicable," under Section 101 of the 1942 Act, "only with respect to taxable years beginning after December 31, 1941," which means, of course, that the amendment is *not* "applicable with respect to" the year 1941. Taxpayer further concedes, as it must, that, by virtue of Section 101 of the 1942 Act, Section 23 (g) (4) of the Code is not applicable to 1941 for the purpose of computing tax liability for that year. (Pet. Br. 38.)

However, in support of its contention that the 1942 law is applicable in calculating net operating loss for 1941, petitioner advances the argument

that Section 101 of the 1942 Act means that all amendments made by that Act may be applied *"in computing a tax liability for"* 1942, with the result that since it is the computation of tax liability for 1942 which is involved, and which in turn involves the computation of net operating loss for 1941, the computation of net operating loss for 1941 should be made according to the law applicable to 1942 (Pet. Br. 30–38, esp. 34).[11]

As the court below stated (R. 220), there is a substantial difference between the phrases "with respect to" and "in computing a tax liability for." "With respect to" ordinarily means "with reference or relation to," "pertaining to" (*International Milling Co.* v. *United States*, 89 C. Cls. 128, 137), or, to quote a familiar authority in these matters, "as regards, with reference to, as to". Webster's *New International Dict.* (2d ed.), p. 2123. To interpret Section 101 as requiring the application of 1942 law "in computing a tax liability for" 1942, *including the computation of net operating loss for 1941,* is equivalent to requiring 1942 law to be used, contrary to the statute's express language, in matters "with respect to", "with reference or relation to", "per-

[11] This contention was initially accepted by Judge Leech in his Tax Court decision in *Moore, Inc.* v. *Commissioner*, 4 T. C. 404, and was adopted by the Fifth Circuit in its affirmance of that decision. 151 F. 2d 527. The reasoning was rejected by the Tax Court in the instant case (R. 198–199), and in *Cambria Collieries Co.* v. *Commissioner*, 10 T. C. 1172, as well as by the Court of Appeals below (R. 219–220). See also *supra*, pp. 14, 24–25, and *infra*, pp. 60–66.

taining to", "as regards", or "as to" taxable years prior to 1942.

For it is plainly "with respect to" *1941* that the taxpayer seeks to apply a statute applicable *only* "with respect to" 1942. The case, of course, involves the computation of tax liability for 1942, but the point at issue is the law applicable in computing net operating loss for 1941. The event on which the claim of loss is grounded—of liquidation of Reo Sales—occurred in 1941, and it is the net operating loss for 1941 which taxpayer is seeking to use for a deduction in the later year. Its claim is that Section 23 (g) (4) should be applied in determining whether its 1941 loss on the Reo Sales stock was a capital or ordinary loss for the purpose of deciding whether it had a net operating loss for 1941. Stated another way, taxpayer is claiming that Section 23 (g) (4), as added in 1942, retroactively converted a capital asset into a noncapital asset, and thus a capital loss into an ordinary loss. These are certainly claims that Section 23 (g) (4) is applicable "with respect to" the year 1941, despite the specific terms of Section 101 of the 1942 Act. Congress used the words "applicable only with respect to taxable years beginning after December 31, 1941"—and not "in computing a tax liability", or making a tax return, for those taxable years—and the difference in meaning suffices to answer taxpayer's case.[12]

[12] In the Revenue Act of 1942, Congress did specifically provide, in some instances, that a Code amendment made by

Petitioner is not helped in escaping from the normal meaning of Congress' words by its argument that the statute employs the terms "applicable only with respect to" 1942 (instead of a phrase referring to tax liability or tax returns) as a means of making the amendments effective in *all* computations of tax liability for 1942, only in order to cover the changes made by the 1942 Act which did not concern computation of tax liability, such as the new provision removing the oath requirement in individual tax returns (Pet. Br. 34–5, 37). "With respect to" 1942 is entirely appropriate for making these non-computation amendments effective for 1942, without stretching the phrase into the equivalent of "*all* matters involved in computing a tax liability for" 1942. On the other hand, if, as petitioner urges, the legislative design had been to make the new amendments applicable to all matters concerned with 1942 tax liability, it would have been natural to use some term referring to tax liability for 1942, or to matters connected with tax liability for that year. (See *infra*, pp. 58–59, for a recent tax statute in which Congress did refer to "tax liability for" a given tax year.)

2. Our position is strengthened, not weakened, by the fact that the provisions of the 1924, 1926,

that Act should be applicable to the taxable year 1941. See *infra*, pp. 32–33. For other provisions of the 1942 Act which are expressly made retroactive, see 56 Stat. 836, 841, 881, 897. See also fn. 10, *supra*, p. 23, fn. 21, *infra*, p. 34, and *infra*, pp. 58–59, for comparable retroactive clauses of other acts.

1928, and 1932 Revenue Acts, which permitted the carry-over of net loss from an earlier year,[13] expressly provided that such net loss should be computed under the law in effect during the earlier period.[14] (Pet. Br. 21–2.) A net loss carry-over deduction had been allowed under the Revenue Acts in effect from 1918 through 1932,[15] and was thereafter discontinued, until it was restored in 1939 by amendments to the Code made by Section 211 of the Revenue Act of 1939, c. 247, 53 Stat. 862. In reviving the mechanism in 1939, Congress referred to the earlier carry-over provisions, and evidently sought to model the new sections generally on the prior practice, as taxpayer admits (Pet. Br. 31), without any suggestion of a departure from such a vital feature as the year governing computation of the net operat-

[13] Section 206 (e) and (f) of the Revenue Act of 1924, c. 234, 43 Stat. 253, Section 206 (e) of the Revenue Act of 1926, c. 27, 44 Stat. 9; Section 117 (e) of the Revenue Act of 1928, c. 852, 45 Stat. 791; Section 117 (d) of the Revenue Act of 1932, c. 209, 47 Stat. 169.

[14] Under the 1924, 1926, 1928, and 1932 Acts, *supra*, the term "net loss" was used instead of "net operating loss."

[15] Section 204 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, and of the Revenue Act of 1921, c. 136, 42 Stat. 227; Section 206 of the Revenue Acts of 1924 and 1926, *supra*; Section 117 of the Revenue Acts of 1928 and 1932, *supra*. The 1918 and 1921 Acts did not contain a special provision similar to that of the later statutes (see fn. 13, *supra*), because the net loss provisions of the earlier acts applied only to taxable years governed by those statutes, and the special provision was not needed. See *infra*, pp. 31–32.

ing loss. H. Rep. No. 855, 76th Cong., 1st Sess., pp. 6, 9).[16]

The difference of form between the Internal Revenue Code and the prior Revenue Acts, in making the law of the earlier year controlling in the computation of net operating loss for the earlier year, is readily explainable. Each of the Revenue Acts of 1924, 1926, 1928 and 1932 displaced the previous Act, was self-contained, and was effective only for the taxable year in which it was enacted and for whatever subsequent years intervened before the enactment of the next succeeding Act. The law of a prior year, therefore, could not control for any purpose under any of those Acts unless it was expressly so provided. This accounts for the fact that the allowance of a net loss deduction under the 1924, 1926, 1928, and 1932 Acts was accompanied by the express provision that the amount of the net loss in a prior taxable year, governed by another statute, should be determined in accordance with the law applicable to the year in which the net loss was sustained. (See also fn. 15, *supra*, p. 30.)[17] A comparable reference to a pre-Code statute is contained, for exactly the same reason, in section 26

[16] "This carry-over is substantially the same as that which was granted to them [i. e., individuals and partners] under the Revenue Act of 1928" (p. 6). See also *infra*, pp. 45–47.

[17] This provision covered only those net losses incurred in years governed by a prior act; no such provision was made where the loss was sustained in a year governed by the act itself, since it was unnecessary. See also fn. 15, *supra*, p. 30.

(c) (2) (B) of the Code (dealing with a different and minor net operating loss).

The Internal Revenue Code, on the other hand, has continuous application, and the Revenue Acts since 1939 have been additions or amendments to the Code. This structural difference between the Code and the Revenue Acts antedating the Code has resulted in the use of a general provision similar or identical to Section 101 of the 1942 Act,[18] under which all amendments are given prospective application, except as otherwise expressly provided. The old provisions remain fully in effect for prior years. Thus, the procedure for making the earlier year's law controlling in computing net operating loss for the earlier year is exactly the reverse of the procedure required with respect to the 1924, 1926, 1928, and 1932 Revenue Acts. Instead of an express provision making the law of the earlier year applicable to the earlier year, an express provision is required to make the amendment, or later law, applicable to the earlier year.

That Congress was quite well aware of this difference under the Code is illustrated by the amendments made by the 1942 Act to critical Section 122 ("Net operating loss deduction") itself. In amending subsections (b), (c), and (e), Congress expressly provided that the amendments should be applicable to the taxable year

[18] See Section 229 of the Revenue Act of 1939; Section 9 of the Revenue Act of 1940, c. 419, 54 Stat. 516; Section 118 of the Revenue Act of 1941, c. 412, 55 Stat. 687; Section 101 of the Revenue Act of 1943, c. 63, 58 Stat. 21; Section 2 of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231.

1941.[19] On the other hand, no such provision was made regarding the amendment to subsection (d) (4), which was therefore applicable only prospectively, under Section 101 of the 1942 Act.[20]

Similarly, no exception was provided for the new paragraph (4) of Section 23 (g) (deduction for capital losses), and the general provision governing the application of all amendments made by the 1942 Act—Section 101—likewise made this amendment prospective only. The former provision of Section 23 (g)—which barred taxpayer from claiming a net operating loss (*supra*, pp. 21–22)—continued to control "with respect to" 1941 matters.

Against this background of the distinction between the pre-Code Acts and the requirements

[19] Section 153 (a), (b), (c), and (e) of the 1942 Act, Appendix, *infra*, pp. 77–79; see *infra*, pp. 54–56.

[20] See Section 150 (e) of the 1942 Act (Appendix, *infra*, p. 77), which amended Section 122 (d) (4) of the Code. See fn. 22, *infra*, pp. 34–35.

Another amendment to Section 122 (d)—the addition of paragraph (6)—was made by Section 105 (e) (3) (C) of the 1942 Act (Appendix, *infra*, pp. 75–76), which, by references under Section 122 (b) (1) and (2) of the Code is amended by Section 153 (a) of the 1942 Act, may have been made applicable to the year 1941, for the purposes of Section 122 (b) of the Code. That amendment, a technical one, is of no importance here. It is discussed in fn. 37, *infra*, pp. 56–57.

The only other amendments made by the 1942 Act to Section 122 of the Code—aside from the above and those made by Section 153 (a), (b), (c), and (e) of the 1942 Act to which reference has just been made in fn. 19, *supra*—consisted of other technical amendments made to Section 122 (a), (c), and (d) of the Code by Section 105 (e) (A), (B), and (C) of the 1942 Act. These were applicable, under Section 101 of the 1942 Act, only with respect to 1942 and subsequent years. See Appendix, *infra*, pp. 70–74, 75–76; fn. 5, *supra*, p. 20.

of a continuing Code, the means employed for stating the effective date of the 1942 changes gives emphasis to our conclusion that those 1942 amendments which were made applicable only to 1942 and subsequent years are not to be used in computing net operating loss for 1941 and earlier years. For the general method adopted by Congress in revising the Code required that it should expressly provide if it intended its 1942 amendments to control as to a prior year, either for the purpose of computing tax liability or for the purpose of computing net operating loss for the prior year. In this very field of carry-overs, Congress did make such express provision when it desired the law of an earlier year to govern.[21] On the other hand, when an amendment is not expressly made retroactive, the amendment is no more to be applied in the computation of net operating loss for a prior year than it is to the computation of tax liability for that year.[22]

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[21] The Revenue Act of 1941 specifically provided, in connection with the analogous excess-profits credit carry-over (repealed by the Revenue Act of 1945 for taxable years beginning after December 31, 1946), that for the purpose of computing the unused excess-profits credit for a taxable year beginning in 1940 "the excess-profits credit and the excess-profits net income for any taxable year beginning in 1940 *shall be computed under the law applicable to taxable years beginning in 1941*" (italics supplied). Revenue Act of 1941, sec. 202 (e), 55 Stat. 701, 26 U. S. C. (1946 ed.), p. 2682.

[22] Our argument, of course, applies equally to the 1942 amendment to section 122 (d) (4)—the provision directly involved in *Moore, Inc.* v. *Commissioner*, 4 T. C. 404, affirmed 151 F. 2d 527 (C. A. 5)—and shows the error in that de-

D. The structure and purpose of the Code's net operating loss carry-over and carry-back provisions also require net operating loss to be computed under the law in effect during the year in which the loss is sustained

Section 122, the portion of the Code defining and regulating the net operating loss deduction and containing the carry-over and carry-back provisions,[23] clearly reflects the Congressional intent that, as under the earlier Revenue Acts permitting a net loss carry-over deduction, net operating loss for any given year is to be computed in accordance with the law applicable to that year, rather than to the year in which a carry-over or carry-back deduction is claimed.[24]

1. As we pointed out at the outset (*supra*, pp. 15–17), subsections (b) and (c) of Section 122 together make provision for determination of the amount of the *net operating loss deduction* for the particular taxable year, here 1942. That deduction, under subsection (c), consists of carry-overs and carry-backs of net operating loss of other years, which carry-overs and carry-backs are authorized by subsection (b). What may be used in any year as a carry-over or carry-

cision. At the same time, it destroys petitioner's bootstrap argument that section 23 (g) (4) must apply in determining 1941 net operating loss because amended section 122 (d) (4) controls the computation of 1941 net operating loss. See *supra*, pp. 14, 24–25, 27; *infra*, pp. 60–66.

[23] The role of Section 23 (g) (deduction for capital losses), with which we mainly dealt in Part C, *supra*, is that it partially defines the term "capital assets" in Section 122 (d) (4). See *supra*, pp. 22–24; fn. 22, p. 34; *infra*, p. 62–64.

[24] Section 122 is reprinted, in pertinent part, *infra*, pp. 70–74.

back depends upon the law in effect in the year in which the carry-forward or carry-back is effective, but the grant of the right to carry-over and carry-back and to take a net operating loss deduction in the taxable year can be availed of by a taxpayer only if he has a net operating loss for a proper prior or subsequent year. And Section 122 itself defines what should be the net operating loss for the prior or subsequent year—the starting point for every carry-over and carry-back—in terms which show that the law applicable to the year of deduction is irrelevant, and that the law governing the year of loss is decisive.

a. Provision for the computation of *net operating loss* for any year is made under the provisions of subsections (a) and (d), and those subsections alone. Subsection (a) defines the term "net operating loss" to mean—

> the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).[25]

Far from being "purely academic in the year 1941 when the excess of the deductions over the gross income actually occurred" (Pet. Br. 15), this subsection of Section 122 is the sole definition of net operating loss for *any* year, including 1941. Thus, the "net operating loss" for any particular

[25] See fn. 5, *supra*, p. 20 for an immaterial change in subsection (a) made by the 1942 Act, adding "additions" to "exceptions and limitations."

year (*e. g.*, 1941) consists of the gross income *for that year* minus the deductions "allowed by this chapter" (the income tax chapter) *for that year* (with the adjustments provided in subsection (d)). It is axiomatic that deductions are "allowed by this chapter" for a particular year only by virtue of the law applicable to that year. It is also axiomatic that the deductions "allowed by this chapter" for a particular year are the deductions allowed in the computation of tax liability for that year. Under Section 122 (a), therefore, the deductions from 1941 gross income allowed in computing net operating loss for 1941 are the very same deductions allowed in the computation of tax liability for 1941—with the adjustments provided in subsection (d). It follows that the base for computation of the net operating loss for 1941 must be the general income tax law in effect for that year, and there can be no justification for the distinction which taxpayer draws between the law applicable for the purpose of computing net operating loss for 1941 and the law applicable to 1941 generally—that is, the law applicable in the computation of tax liability for 1941. On taxpayer's view that 1942 law governs, the whole of its 1941 operations, and not merely that portion relating to the liquidation of Reo Sales, should be reaudited and its income recomputed under all the deduction and income provisions applicable to 1942 income tax returns, to see whether it suf-

fered a net operating loss in 1941.[26] But there would certainly be no warrant in the statute for this extraordinary recomputation, even though consistency to taxpayer's theory would require it. Section 122 (a) simply cannot be read as defining "net operating loss" *for 1941* as meaning the difference between the taxpayer's gross income for 1941 (calculated according to 1942 law) and "the deductions allowed by this [income tax] chapter", for 1942 incomes rather than for those of 1941.

The existence of the adjustments provided in subsection (d) does not change this result.[27] For these "exceptions and limitations" (or "exceptions, additions, and limitations," as the 1942 Act changed subsection (a) to read) are adjustments to be made in the difference between the gross income for a given year (*e. g.*, 1941) and the deductions allowed for that same year (*e. g.*, 1941)—*i. e.*, a net loss computation wholly determined by the law of that year, as we have just shown (*supra*, pp. 36–38)—and there is no reason to assert that the adjustments to be made in this loss are to be governed by the law of another year. For in-

[26] Petitioner has not suggested this overall recomputation.

[27] As pointed out in fn. 6, *supra*, p. 21, these adjustments may make the difference between a *net loss* for a tax year and the *net operating loss* subject to carry-over and carry-back (and deduction) in another year.

The adjustments provided in Section 122 (d) were for the purpose of insuring that only an economic, and not a theoretical, loss would be taken into account. H. Rep. No. 855, 76th Cong., 1st Sess. (1939–2 Cum. Bull. 504), p. 17.

stance, Section 122 (d) (4), involved here, constituted a *limitation,* for the purpose of computing 1941 net operating loss, upon the taxpayer's net loss for 1941, as determined by 1941 law, and *as such a limitation* upon that 1941 loss it would naturally be applicable in its 1941, and not its 1942, form—unless Congress made special provision to the contrary.

b. Petitioner's error is made clear by the tripartite division of the Code's net operating loss provisions, to which we have referred. *Supra,* pp. 16–17. The starting point is always (i) the "net operating loss" incurred in a given year; if such a loss exists, and only if it exists, under the statutes then in effect, the taxpayer may avail himself of (ii) the "carry-back" and "carry-over" device, and thereafter make use of the loss to offset income in another year by means of (iii) a "net operating loss deduction."[28] The first step, on the one hand, and the second and third, on the other, are normally controlled by the law of different years. Unless specific provision is otherwise made:—The "net operating loss" for a given year is governed by the statutes generally applicable to that year. The amount of a net operating loss which may be considered a "carry-over" or "carry-back,"

[28] "Net operating loss" is governed by section 122 (a); "net operating loss carry-back" and "net operating loss carry-over" are governed by section 122 (b) (1) and section 122 (b) (2), respectively; "net operating loss deduction" is governed by section 122 (c).

and the extent to which the "carry-over" or "carry-back" is used as an offset to net income in another year, are determined by the law of the later or earlier year in which the "carry" is to be effective.[29] Similarly, the law of the year in which the taxpayer seeks to take a "net operating loss deduction" controls whether and to what extent such a deduction is allowed in that year, and the amount of the carry-overs and carry-backs to be included.[30] In Reo Motors' case, 1941 law determines whether and to what extent a net operating loss was sustained by taxpayer in that year, but 1942 law indicates the extent to which such a

[29] For instance, subsection (b) of Section 122 now requires that net operating loss be offset against net income of the carry-back and carry-over years, computed with stated adjustments. The nature and extent of this offset is ruled by the law in effect at the time it is made and given effect (*i. e.*, Section 122 (b), as it stands at the particular time). And net income of the carry-back or carry-over year, against which net operating loss is to be offset, is to be determined in accordance with the law of the carry-back or carry-over year, unless contrary provision is specifically made. But the computation of the offsetting net operating loss is governed by the rules in effect in the earlier or later year in which it was sustained.

[30] For example, if a 1942 amendment to Section 122 had directed that only half of a net operating loss carried over from a prior year could be deducted in any one year, that 1942 amendment would control a taxpayer's net operating loss deduction for 1942 and only half of its 1941 loss could be offset against 1942 income. But the computation of the 1941 net operating loss itself would be governed by the legislation effective in 1941.

loss, if any, may be deducted in 1942 from petitioner's gross income for that year.[31]

2. a. The terms of Section 122, and its legislative history, likewise prove that the net operating loss for any given year will be a *fixed amount,* not subject to annual fluctuation. Subsection (b) (2), for example, states that "If for any taxable year the taxpayer has a net operating loss, *such* net operating loss" shall be a carry-over for the two succeeding years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, "of the amount of *such* net operating loss" over the net income for the intervening year computed with certain adjustments, and by determining the net operating loss deduction for such intervening taxable year without regard "to *such* net operating loss" and without regard to any net operating loss carry-back (italics supplied). Subsection (b) (1) con-

[31] In this connection, petitioner mistakenly describes the Government's "basic" position as "that the amount of the net operating loss is determined by reference to the law applicable to the year of loss, the net operating loss carry-over by reference to the law applicable to the intervening year and only the net operating loss deduction itself by the law applicable to the year of deduction." (Pet. Br. 29–30). Our position is stated in the text and the preceding footnotes. It may be noted, first, that ordinarily the year of a net operating loss deduction will coincide with the year of a carry-over or carry-back, or both, and, secondly, that Congress does sometimes make special provision for amendments to govern in other years. See *supra*, pp. 23 (fn. 10), 28 (fn. 12), 31–34 (esp. fn. 21); *infra*, pp. 56–57 (fn. 37), 58–59.

tains similar language regarding the carry-back to the first preceding year.

The statute's terms aside, it is also plain from the legislative history that Congress assumed that it was the actual and fixed amount of net operating loss for a given year—represented by an excess of allowable operating loss deductions for that year over gross operating income for that year—which was to be offset, until exhausted, against net operating income of other years for which carry-overs and carry-backs were authorized. This is clearly reflected in the various examples of the operation of the carry-over and carry-back provisions given in H. Rep. No. 855, 76th Cong., 1st Sess., pp. 9–10, 17–18 (on the 1939 net loss carry-over provision) and S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 122–123 (1942 revision of Section 122)—all of which use a fixed amount as the net operating loss for a given year. See *infra*, p. 46–47. See also, Treasury Regulations 111, Sec. 29.122–4.

This requirement that the net operating loss be a fixed amount can only be fulfilled if it be computed in accordance with the law applicable to the year in which the loss is sustained. Under taxpayer's construction, the amount (or the very existence) of the net operating loss may change radically, depending on which of the four years to which it is carried. *Supra*, pp. 15–16, 35–36, 39–41. The definition of "gross income", and the deductions allowed, as well as the adjustments

provided in Section 122 (d), may and in some instances do vary from year to year, and the computation of net operating loss for a given year would likewise necessarily change.

b. Moreover, under the statutory plan and the clear Congressional understanding (as its examples, cited above (p. 42), show), a net operating loss may not be carried to any taxable year so long as there is income in a prior year to which the loss could be applied. That is, a 1940 loss cannot be carried to 1942 so long as there is income in 1941 which could absorb the 1940 loss. Taxpayer's contention cannot be applied consistently with this legislative scheme in allowing the net operating loss deduction, as an example will make clear. Assume that X had a net operating loss of $50,000 for 1940, as computed under either 1940 or 1941 law, and net operating income [32] of $75,000 for 1941. The deduction in 1941 of the 1940 net operating loss would give X the full benefit Congress intended, and the full 1940 net operating loss carry-over would be exhausted. Assume further, however, that under *1942* law X's 1940 net operating loss was $100,000, instead of $50,000, by reason of the fact that pertinent deductions were allowed in 1942 which were not allowed in 1940 or 1941. X would, under tax-

[32] The term "net operating income" is used to designate net income as computed with the exceptions and limitations of Section 122 (d), which adjustments are applicable in the computation of net income subject to offset by net operating loss under Section 122 (b).

payer's contention, now have a net operating loss carry-over from 1940 to 1942, of $100,000 minus $50,000 (the carry-over deducted in 1941), or $50,000, despite the fact that X's actual 1940 net operating loss had already been deducted in full by offset against 1941 income. The net operating loss for the year 1940 is obviously not a fixed amount from year to year, on this theory, nor is the 1941 net operating income wholly offset by the 1940 loss before that loss is carried over to 1942. There would still be unabsorbed $25,000 of net operating income for 1941, and yet X would have a carry-over of $50,000 to 1942. This cannot be the proper construction of Section 122.[33]

c. Again, petitioner's construction of the statute would result, in some cases, in retroactively allowing a net operating loss carry-over from a year in which the taxpayer had net income under the law controlling that year, and for which it had to pay a tax, and therefore had no actual loss at all. The Fifth Circuit, in its *Moore* opinion, thought that Congress intended to "produce"—via amendments of the type involved here—"a net loss which had not in truth existed" (151 F. 2d, at 529). But as early as the net loss provisions of the Revenue Act of 1924,

[33] The administrative complexities and difficulties of the recomputations and reaudits which petitioner's construction would entail likewise urge strongly against its view. Cf. *Crane* v. *Commissioner*, 331 U. S. 1, 10, affirming 153 F. 2d 504, 505 (C. A. 2).

the House Committee on Ways and Means expressly indicated that it considered such a result to be "anomalous" and to be avoided in the working of the net loss mechanism. Report of the House Committee on Ways and Means on the Revenue Bill of 1924, H. Rep. No. 179, 68th Cong., 1st Sess., p. 19 (1939–1 (part 2) Cum. Bull. 241, 254–5). There is no reason to suppose that the Congresses which molded the Code net operating loss provisions on the pattern of the earlier acts took a different view.

3. Perhaps above all, taxpayer's argument should be rejected because it radically departs from the prime purpose of Congress to secure approximate tax equality (a) between businesses with stable profits and those with fluctuating earnings, and (b) among taxpayers suffering losses in some years and earning profits in others. *Supra,* pp. 17–18.

As the committee reports reveal, the major point of the net operating loss provisions is to do away with the larger amount of taxes imposed on taxpayers with alternating losses and profits, as compared with the taxes paid by businesses with less fluctuation in earnings. Though their average earnings over a span of years might be the same, before 1939 the latter class of taxpayers could take advantage, and receive the benefit of, their deductions in each taxable year, thus decreasing the amount of taxes paid over the

years, while the former only realized a tax benefit from their deductions in profitable years; in years of loss, a portion of their deductions went to waste, so to speak, and could not be used to reduce their already nonexistent tax. Congress' purpose in adopting and amending the net operating loss device was to remedy this defect by allowing a business with fluctuating profit-and-loss to receive the benefit of its deductions. See *supra*, p. 17–18.[34]

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[34] H. Rep. No. 855, 76th Cong., 1st Sess. (1939–2 Cum. Bull. 504) stated, in recommending the readoption of a net operating loss carry-over in 1939 (pp. 9–10):

"2. *Net loss carry-over.*—The bill, together with the committee amendments, permits taxpayers to carry over net operating business losses for a period of 2 years. Prior to the Revenue Act of 1932, such 2-year carry-over was allowed. No net loss has ever been allowed for a greater period than 2 years. In the Revenue Act of 1932, the 2-year net loss carry-over was reduced to 1 year and in the National Industrial Recovery Act the net loss carry-over was entirely eliminated. As a result of the elimination of this carry-over, a business with alternating profit and loss is required to pay higher taxes over a period of years than a business with stable profits, although the average income of the two firms is equal. New enterprises and the capital-goods industries are especially subject to wide fluctuations in earnings. It is, therefore, believed that the allowance of a net operating business loss carry-over will greatly aid business and stimulate new enterprises. * * * An example will show the necessity for such a provision.

"Suppose a corporation, over the 3-year period 1939–41, shows the following:

Net operating loss for 1939	$2,000,000
Normal-tax net income for 1940	1,000,000
Normal-tax net income for 1941	1,000,000

"Looking at this 3-year period, it will be seen that the corporation has not made any profit. However, assuming a

If, however, a taxpayer may recompute its net operating losses for prior or subsequent years, in the course of carrying-over or carrying-back the net operating loss for deduction in another tax year, this result is not achieved. Some tax-

flat rate of 18 percent, it would be required to pay a tax of $360,000 if there were no provision for a net loss carry-over. Under the bill, a corporation in such a case would not be required to pay an income tax."

In advising the adoption of the carry-back provisions, in 1942, S. Rep. No. 1631, 77th Cong., 2d Sess. (1942-2 Cum. Bull. 504, 546-7), pp. 51-2 stated:

"The present law permits corporations to carry forward for 2 years their net operating losses. It also allows the unused excess-profits credit to be carried forward for 2 years. These provisions obviously are of benefit only in periods of increasing business activities. Many corporations will suffer substantially in periods of declining profits, especially at the close of a war economy in which their deductible expenses have been held down to a bare minimum by priorities, rationing, labor shortages, and other factors beyond the control of the taxpayer. For example, a corporation during the war years makes substantial profits which would be considerably reduced if it could make the expenditures possible in a free economy for maintenance, repair, and other deductible expenses. Upon the termination of the war, the materials and labor will once more be available, but the costs and expenses which would otherwise be taken against the wartime profits will fall into the years of lesser profits or of no profits, thereby resulting in small or no tax benefit for the taxpayer.

* * * * *

"To afford relief to these hardship cases, where maintenance and upkeep expenses, must, because of wartime restrictions be deferred to peacetime years, your committee has provided a 2-year carry-back of operating losses and of unused excess-profits credit. This provision affords, in effect, the same type of relief in periods of declining profits which the present 2-year carry-forward of operating losses and unused excess-profits credits affords in periods of increasing profits."

payers will secure extra deductions, unavailable to those who have no losses and who therefore cannot use the carrying mechanism; others will lose deductions which are available to taxpayers with steadier earnings.

a. For instance, beginning with taxable year 1942, but not before, Congress has allowed a statutory deduction for amortizable bond premiums (Revenue Act of 1942, Secs. 101, 126, 56 Stat. 798, 802, 822). Assume that Corporation A in 1941 has $10,000 of gross income and $10,000 of allowable deductions under 1941 law—a net income of zero, and no tax—and also $1,000 of amortizable bond premium attributable to 1941. Corporation B has greater profits in 1941; it has $12,000 of gross income and $10,000 of allowable deductions—a net income of $2,000, on which a tax is paid—and likewise $1,000 of amortizable bond premium attributable to 1941 (assuming that this $1,000 is not deductible in another connection).

When 1941 is recomputed under 1942 law, on petitioner's theory, Corporation A will have $11,000 of allowable deductions, and therefore a new operating loss of $1,000, which can be carried over from 1941 and deducted in 1942. However, if Corporation B's 1941 income and deductions are recomputed under 1942 law, its extra $1,000 of deductions will not be enough to give it an excess of deductions ($11,000) over gross income ($12,000), and there would be no operating loss

to carry over to 1942. The $1,000 deduction for amortizable bond premium could, therefore, never be deducted by Corporation B, but would, on the other hand, be deducted by Corporation A in its 1942 return. In this way, Corporation A would be given the benefit of an extra deduction for 1941 which other taxpayers operating without loss could never receive. It would not only be permitted to pay tax on its average income over a period of years but would receive an additional benefit which there is no indication Congress intended to confer.[35]

b. Still another example will serve to illustrate that a taxpayer which *actually* had a net operating loss in a given year might be deprived of a deduction therefor by computation of net operating loss in accordance with taxpayer's contention. Assume that Y had net operating income of $50,000 for 1941 and a net operating loss of $50,000 for 1943, as computed under the law applicable to 1943. Under Section 122 (b), the 1943 net operating loss must first be carried back to the second preceding year, here 1941, before it may be applied to the other carry-back and carry-over years. *Supra*, pp. 15–16. When the $50,000 net operating loss actually sustained by Y in 1943 (as computed under 1943 law) is offset against 1941 net operating income of $50,000, as we contend it should be, Y will have received the

[35] Another example of this type of discrimination is given above, at pp. 43–44.

benefit Congress intended in making provision for the net operating loss deduction. However, under taxpayer's argument the law applicable to 1941 would have to be applied in computing Y's 1943 net operating loss. Let us say that the 1941 law did not allow certain deductions allowed in 1943, and that Y's net operating loss for 1943 is not $50,000 but $25,000, as computed under the law applicable to 1941. Y could take a carry-back deduction in 1941 of only $25,000 (instead of $50,000) for 1943 net operating loss, and therefore would have to pay tax on the remaining $25,000 of income in 1941. Y would thereby be deprived of a deduction in 1941 for a net operating loss of $25,000 which it actually sustained in 1943, and thus would not have the right to average out its 1943 loss against 1941 income, as Congress intended.[36]

Nor would Y be able to deduct the remaining $25,000 in the second carry-back year, 1942—in which its net income was $25,000—even assuming that its 1943 loss (as computed under 1942 law) was $50,000. Under Section 122 (b) (1), the carry-back to, and deduction for, 1942 is limited

[36] If the tables were turned in the present case, and a taxpayer which sustained a net operating loss in 1943 through the worthless stock of a subsidiary (other things being equal) were to carry that loss back to 1941, petitioner's theory would forbid it from deducting the loss in 1941, because the law of that year excluded such a loss from the computation of net operating loss. It would in effect lose the deduction granted it by Section 23 (g) (4).

to the excess, if any, of the amount of the net operating loss for 1943 over the net income for 1941 with certain adjustments. *Supra*, pp. 43–44. There would be no excess to be deducted in 1942, in the assumed example, since the 1943 loss (computed under 1942 law) is the same amount ($50,000) as the 1941 net income ($50,000). Similarly, Y would not be permitted to carry over the unused $25,000 of the 1943 loss to the years 1944 and 1945 as a deduction, assuming that the 1943 net operating loss (as computed under 1944 and 1945 law) remained $50,000. This is so because Section 122 (b) (2) requires the net operating loss for 1943 to be reduced by the sum of the net income for 1941 and 1942, with certain adjustments. (Appendix, *infra*, p. 71.) The sum of the net income for 1941 ($50,000) and 1942 ($25,000) is $75,000, which exceeds the 1943 loss of $50,000 and thus eliminates any net operating loss carry-over. It follows that Y would be prevented, under taxpayer's contention, from using his 1943 net operating loss as a complete offset to income of the carry-back and carry-over years, and the Congressional purpose to tax Y on the average of his income over the five-year period would be frustrated. (See also *supra*, pp. 43–44.)

4. On the other hand, the legislative intent is fully effectuated, and the terms of Section 122 are fulfilled, when net operating loss for any given year is computed according to the law ap-

plicable to that year. Such a computation of net operating loss results in a fixed amount of net operating loss for the given year, which, under Section 122 (b), may successively be applied as an offset against net income of the second preceding year, the first preceding year, the first succeeding year, and the second succeeding year. Only the remaining excess of that fixed amount over net income of each of those years is available as an offset against income of the next year, and the full amount of the net operating loss will presumably be offset against net income in one or more of the carry-back and carry-over years. Thus, a taxpayer who has an excess of deductions in one year over gross income of that year—*i. e.*, a net operating loss—is permitted to receive a tax benefit from those deductions in other years by an offset against net income of the other years. The result is payment of tax on the average of income over the years, as Congress intended—a result which, as we have shown, cannot be obtained by changing the amount of net operating loss for a given year from year to year according to the law applicable in those other years.

Petitioner's opposing contentions are all far wide of their mark. *First:*—It seems to urge (Pet. Br. 13–14) that since this case happens to involve a deduction disallowed under 1941 law in computing net operating loss for 1941, but

allowed in computing net income and tax liability for 1941 (see fn. 6, *supra*, p. 21), the Court should entirely disregard the Congressional purpose we have outlined and the structure of the net operating loss provisions (*supra*, pp. 35–52). It is true that this particular taxpayer will not "gain an extra deduction" in the same sense as the taxpayers in some of our examples (*supra*, pp. 43–44, 48–49)—because Congress did permit its stock loss to be deducted in determining 1941 net income—but it will be enabled to bypass a specific limitation which Congress imposed, for reasons which seemed good to it, on the computation of 1941 net operating loss, while other taxpayers will be subject to the exceptions and limitations Congress specified in subsection (d) of Section 122.[36a]

Moreover, petitioner's argument seems to be that because the worst consequences of its proffered interpretation will not occur in this particular instance, its general theory may be accepted without hesitancy. But, as we have shown (*supra*, pp. 29–52), the terms and structure of Section 122, as well as its purpose, history, and aim, require the general conclusion that computation of net operating loss be controlled by the law of the year in which the loss is sustained, and there is no room in the statute's

[36a] It is to be noted that tax rates were higher in 1942 than in 1941, and petitioner would probably secure a decided advantage if it could take a large deduction, resulting from its stock loss, in the latter year.

language for a special exception covering petitioner's particular case. Conversely, taxpayer's theory cannot be adopted, or its contention upheld in this case, without at the same time opening the door, under the statute's terms, to all the incongruous consequences we have sketched, and to the nullification of Congress' policy of achieving approximate tax equality.

Second.—There is no merit in the argument taxpayer makes (Pet. Br. 26–30) in reliance upon some language in S. Rep. No. 1631, 77th Cong., 2d Sess., *supra,* p. 47. The amendments made by Section 153 of the Revenue Act of 1942 (Appendix, *infra,* pp. 77–79) were to Section 122 (b) (c) and (e) of the Code and for the most part added provisions permitting net operating loss carry-backs for the first time. Section 153 also amended Section 122 (e) of the Code to provide that there was to be no carry-back to years prior to 1941, and these amendments made by Section 153 were expressly made applicable to taxable years beginning after December 31, *1940.*[36b] *Supra,* pp. 32–33. In this connection, S. Rep. No. 1631, *supra,* p. 123, stated that the carry-overs from the years 1939 and 1940 to the taxable year 1941, and the carry-backs to 1941 from the years 1942 and 1943, would be determined under the amendments made by Section 155, which later became Section 153. That statement, upon which taxpayer relies (Pet. Br. 27), had reference, mainly if not entirely, to the fact that it was permissible under

[36b] Subsection (a), defining net operating loss, was not affected by these amendments.

Section 122 (b) of the Code, as newly amended, not only to carry-over but to carry-*back* net operating losses to 1941, and the carry-back device was specifically made retroactive to cover the taxable year 1941. See R. 221–2.

Petitioner, however, reaches the conclusion, by a complex process of deduction (Pet. Br. 27–29), that the Committee must have meant that net operating losses for 1939 and 1940 were to be computed under the law as amended in 1942, if a net operating loss deduction were taken in 1941 or 1942. But the fact is that computation of net operating loss was in no way involved, because net operating loss is governed by subsections (a) and (d) of Section 122 (*supra,* pp. 36–39), and not by subsections (b) and (c) (the carry-over and carry-back provisions) which alone were involved in the amendments made by Section 153 (of the 1942 Act) to which the Committee was referring. As we have pointed out (*supra,* pp. 15–17, 35–41), there is a sharp distinction between the computation of net operating loss for a given year and the determination of whether and to what extent that loss is to be carried forward or backward. If the Committee's words have any bearing on this matter at all, it plainly was dealing solely with the latter aspect. It was asserting that the portion of the net operating losses for 1939 and 1940 which were to be carried over *to 1941,* and deducted in that year, would be governed by the carry-over and carry-back amendments expressly

made applicable, by the 1942 Act, to 1941. It gave no intimation that computation of a 1939 or a 1940 net operating loss itself was to be governed retroactively by the 1942 amendments.[37] (By way of contrast, see fn. 21, *supra*, p. 34, for an instance in which Congress did specifically direct, in comparable carry-over circumstances, that the law of a later year govern.)

Third:—The attempt is also made to argue, by way of misplaced analogies to different statutes and different tax situations, that Congress must have intended net operating loss for 1941, which is carried over and deducted in 1942, to be com-

[37] As to petitioner's involved and inferential argument based on Section 122 (d) (6) of the Code (Pet. 28–30), it should be said that that provision was added by Section 105 (e) (3) (C) of the 1942 Act as one of the "Technical Amendments Made Necessary by Change in Base for Corporate Tax" (Appendix, *infra*, pp. 75–76; see fn. 20, *supra*, p. 33) and relates to a deduction for payment of excess profits tax which is not involved here. The amendment is governed by Section 101 of the 1942 Act, and is therefore ordinarily effective only as to tax years beginning in 1942, or thereafter. It was added to provide for the deduction, beginning in 1942, of the excess profits tax paid or accrued within the taxable year for purposes of computing the net operating loss and the carry-overs and carry-backs for that year, because the excess profits tax was not allowed as a deduction in computing net income for taxable years beginning in 1942, or thereafter. 56 Stat. 806. The amendment would, therefore, not seem to have any bearing on computation of net operating loss, or offsetting net income, for years prior to 1942 (since the excess profits tax was deductible under 1941 law in computing 1941 tax liability).

Assuming, however, with petitioner (though the assumption is very doubtful in light of the facts just stated) that

puted according to the "year of tax liability" (*i. e.,* 1942), or else it would have "clearly provided" otherwise. (Pet. Br. 20–26). The argument thus far has shown, we believe, that both (a) the specific terms of Section 101 of the 1942 Act, indicating the taxable years to which the 1942 amendment here involved is applicable (*supra,* pp. 26–34), and also (b) the terms, structure, purpose, and legislative history of the Internal Revenue Code's net operating loss provisions (*supra,* pp. 29–52), require the taxpayer's 1941 net operating loss to be determined under 1941 law. Thus, Congress *has* "clearly provided" to the contrary of petitioner's contentions, and this firmly-supported conclusion, based on explicit

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the references in the amended Section 122 (b) (effective in 1941), and the cryptic statement of the Senate Committee (particularly its ambiguous reference to certain adjustments "now" required), indicate that subsection (d) (6) is somehow to be used in computing the portion of the 1940 net income to be offset in determining a carry-over of 1939 net operating loss to 1941, we fail to see the relevance of the argument to the present case. If this is so, it is because the new Sections 122 (b) and (c) expressly control net operating loss carry-overs to, and net operating loss deductions in, 1941, and in that connection determine the extent to which a prior net operating loss, which is to be carried to 1941, may be offset in 1940. We may repeat that this is no indication whatever that computation of the net operating loss itself is also to be computed under the law applicable to year of deduction. Furthermore, if partial retroactive effect is given to the 1942 addition of Section 122 (d) (6) in the computation of 1941 net operating loss, or otherwise, it is solely because Congress made special provision to that effect, in Section 153 (a) of the 1942 Act (*supra,* p. 33), and no general rule can be deduced from this specific statutory exception.

and affirmative indications of legislative meaning, can hardly be destroyed by reference to the following remote and plainly distinguishable situations and cases:—

As the court below held (R. 222), taxpayer can derive no aid from Treasury Regulations involving profit from installment sales (Pet. Br. 23–5), since installment payments are properly governed, under the statutes and regulations, by the law of the year in which received, when they become taxable, and not according to the year in which the sale was made. *Commissioner* v. *South Texas Co.*, 333 U. S. 496, 502–3, 505–6; *Snell* v. *Commissioner*, 97 F. 2d 891, 893 (C. A. 5). Likewise, *Community Public Service Co.* v. *Commissioner*, 12 T. C. 893 (May 31, 1949), does not support petitioner. There, the taxpayer was permitted to compute its unused excess profits tax credit for 1941 and 1942, carried over to 1943, on the basis of a 1943 amendment, solely because a provision having the effect of the 1943 amendment was expressly required by Congress to "be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1933" (58 Stat. 43), and the Tax Court held that recomputation of the 1941 and 1942 unused excess profits tax credit was thus expressly sanctioned.[38] In making the amendment retroactive,

[38] The particular 1943 amendment, which was retroactively made applicable to all years after 1933, concerned the use by the taxpayer of its predecessor's basis for assets acquired from the predecessor under a plan of reorganization.

Congress added that it was, however, not to "affect any *tax liability* for any taxable year beginning prior to January 1, 1943" (53 Stat. 43; italics supplied); the Tax Court held that this provision was no bar because only tax liability for 1943, and not for 1941 or 1942, was involved (12 T. C. at 897). If anything, this latter portion of the *Community Public Service* case works directly against petitioner. For in the present instance the section of the 1942 Act bearing on the effective date of the disputed amendment makes it "applicable only with respect to taxable years" 1942 (and thereafter), and says not a word about "tax liability" (*supra*, p. 26). Yet petitioner's whole argument admittedly is an effort to prove that Congress nevertheless intended to say that the amendment was to be applicable in *all* matters involved "in computing a tax liability for" 1942 (see Pet. Br. 31–34). But it is evident that Congress knew how to use that phrase when it desired to do so. See also fn. 21, *supra*, p. 34 (unused excess profits credit carry-over).

In *Forstmann* v. *Rogers*, 128 F. 2d 126, 128–129 (C. A. 3), the court reluctantly felt compelled, because of an apparently inadvertent but clear legislative omission, to hold tax-free in 1929 (when the bonds acquired in a 1922 exchange matured) any capital gains realized upon the exchange of those securities for other bonds in 1922, and which were not taxed at that time. The de-

cision clearly rested on the particular and unique statutory provisions there involved, and the Third Circuit was certainly not attempting to lay down any such general rule as petitioner seeks to formulate (Pet. Br. 25). Similarly, in *Dockendorff* v. *United States,* 84 F. Supp. 372, the Court of Claims held, on the basis of a detailed analysis of the particular partnership tax statutes and their legislative history, that Congress had spelled out, in the situation then before the court, a "special rule" which is "an exception to the general rule of Section 101" of the Revenue Act of 1942 (*supra,* p. 26; *infra,* p. 74) (84 F. Supp. at 378, 379). Again, no general principle, like that advocated by the taxpayer here, was promulgated, and the court was careful to confine its decision to the special tax situation with which it was dealing.[39]

Fourth:—Taxpayer's fundamental but circular contention, constantly reechoing throughout its argument, is that the 1942 amendment adding paragraph (4) to Section 23 (g) of the Code (*infra,* pp. 68–69 (fn. 1)) must apply in this case because the 1942 amendment to Section 122 (d) (4) (*infra,* p. 73, fn. 5) governs all net operating loss and all net operating loss deduction computations in 1942 (Pet. Br. 11–19; 32–33, 35–37). On that assumption, the claim is that the refer-

[39] At pp. 29–34, *supra,* we discuss petitioner's further contention that the difference between the wording of the net loss provisions of the 1924, 1926, 1928, and 1932 Revenue Acts, and the net operating loss provisions of the Internal Revenue Code indicates a change in governing law (Pet. Br. 21–2).

ence in the amended Section 122 (d) (4) to "capital assets", must have the same meaning as the same term bears in Section 23 (g)—as simultaneously amended in 1942 by the addition of paragraph (4)—and, therefore, taxpayer's Reo Sales stock cannot be deemed a "capital asset," in 1942, for the purposes of Section 122 (d) (4).

The fallacy is twofold. In the first place, petitioner's argument wholly depends on the application of the amended Section 122 (d) (4) to this case, and therefore assumes its conclusion. For under Section 101 of the 1942 Act, the amendment to Section 122 (d) (4)—like the amendment to Section 23 (g)—is "applicable only with respect to taxable years beginning after December 31, 1941," and is therefore not applicable in the computation of net operating loss for 1941, for precisely the same reasons as Section 23 (g) (4) is inapplicable. See *supra*, pp. 24–25, 26–52. (The contrary conclusion in *Commissioner* v. *Moore, Inc.*, 151 F. 2d 527 (C. A. 5), affirming 4 T. C. 404, we believe to be erroneous, as we stated at the outset of our argument (*supra*, pp. 14, 24–25)).[40] The earlier version of

[40] It should be added that the holding in the *Moore* case was also contrary to the provisions of Section 19.122–2 of Treasury Regulations 103, as amended by T. D. 5217, 1943 Cum. Bull. 314, 329, and of Section 29.122–2 of Treasury Regulations 111, which are identical. Under the Regulations the amendment to Section 122 (d) (4) was made applicable only in the computation of net operating loss for 1942 and subse-

Section 122 (d) (4) is thus the only one applicable here (*supra*, pp. 20–21; *infra*, p. 73), and since petitioner's argument rests on the opposite, but erroneous, assumption that the 1942 amendment to Section 122 (d) (4) controls in computing 1941 net operating loss, it is necessarily infected with a fundamental error.[41]

In the second place, the terms "gains and losses from sales or exchange of capital assets" in Section 122 (d) (4) are "neutral" terms,

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quent years. Section 29.122–2 of Treasury Regulations 111 provided:

"SEC. 29.122–2. *Computation of Net Operating Loss in Case of Corporation.*—A net operating loss is sustained by a corporation in any taxable year if and to the extent that, for such year, there is an excess of deductions allowed by chapter 1 over gross income, both computed with the following exceptions, additions, and limitations:

* * * * *

"(4) For any taxable year beginning after December 31, 1938, and before January 1, 1942, the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of short-term capital gains. For any taxable year beginning after December 31, 1941, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of such assets; * * *"

[41] Petitioner appears to agree with us that the *Moore* case cannot be distinguished from the present one (Pet. Br. 19, 33), and there is therefore no way of commencing an argument from the postulate that *Moore's* holding as to Section 122 (d) (4) is correct, and thus escaping the vicious circle. Both cases stand on the same footing. See, *supra*, pp. 14, 24–25, 27, 60–62; *infra*, pp. 64–66.

normally taking their definitions from other Code sections, applicable to a given year, and do not embody in themselves a particular fixed definition of "capital assets." Here, that phrase takes its meaning from Section 23 (g); taxpayer urges that the 1942 version of Section 23 (g) supplies the definition, while the Government contends that the 1941 form governs. If, for instance, Congress should repeal Section 23 (g) (4) in 1950, and reinstate the 1941 law on the subject of losses on stock in an affiliated corporation (making them capital losses again), it would not be necessary to refer to, or amend, Section 122 (d) (4). For the tax years governed by the hypothetical 1950 change, "capital assets" in Section 122 (d) (4) would automatically take on the new meaning. It is true, as petitioner states (Pet. Br. 17–18), that Congress does define such terms as "gains and losses from sales or exchange of capital assets" (Pet. 17–18), and the definition must be followed, but the difficulty with petitioner's argument is that the very same terms are sometimes redefined and can easily have different meanings in different years.[42] "Capital assets" in section 122 (d) (4) includes stock in an affiliated corporation, such as petitioner's Reo Sales stock, for 1941 purposes, and

[42] For example, real property used in trade or business was a "capital asset" before 1942, but in 1942 was excluded from the definition of that term. 56 Stat. 846.

excludes such stock in 1942, because Congress altered the governing definition.[43]

As for the *Moore* case (151 F. 2d. 527, affirming 4 T. C. 404), which taxpayer uses for its main support, we believe that its reasoning, both in the Tax Court and in the Fifth Circuit, is diametrically opposed to that of the Tax Court and the Sixth Circuit in the instant case. This was recognized by Judge Leech, the single Tax Court judge who sat in the *Moore* case, in his sole dissent here; he thought that the "*ratio decidendi* in *Moore, Inc.* * * * applies with equal force here and requires the opposite conclusion to that of the majority" (R. 200).[44] The court below, noting that it was not bound by the Fifth Circuit's conclusion, found it unnecessary to determine whether the same or a different issue was presented and decided in the *Moore* case, because it held that the Tax Court's present result was correct in either event (R. 220). And there is added to this implicit recognition of indistinguishability, the fact that the rationale of the opinion below cannot be squared with that

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[43] We point out in fn. 7, *supra*, p. 21, the irrelevance to this case—even if the 1942 amendment to Section 122 (d) (4) applies—of the elimination, by that amendment, of the matching of long-term capital losses against long-term capital gains, and short-term losses against short-term gains, since petitioner had no capital gains of either kind.

[44] As stated in fn. 1, *supra*, p. 14, the present case, unlike *Moore*, was reviewed by the full Tax Court bench of sixteen judges, and only Judge Leech dissented.

expressed by the Fifth Circuit. *Supra*, pp. 24–25, 26–34; cf. 35 *et seq.*

However, the Tax Court, in this and other cases, has attempted to distinguish the *Moore* case upon a ground not foreshadowed in that opinion. The difference, the court says, is that the earlier case involved a 1942 amendment directly altering a provision of Section 122 (d) (4) of the Code, while the instant case involves a 1942 amendment which did not change the provisions of Section 122 itself, but rather altered another Code provision (Section 23 (g)) partially defining certain terms ("capital losses" and "capital assets") used in Section 122 (d) (4) (R. 199–200).

In the Tax Court, and the court below, respondent has urged that this deduction is not valid, and that the present case and the *Moore* decision cannot properly stand together (R. 220). We reiterate that concession here. It does not seem to us to make any difference whether the later amendment changes one portion of the Code or another, as long as Congress does not indicate that the amendment is to have retroactive effect. Both the amendment involved in the *Moore* case and that with which we are now mainly concerned related to the computation of net operating loss under Section 122 (a), and both were specifically made applicable only to tax year 1942 and following. *Supra*, pp. 24–25. Both amendments should be treated alike, and, in our view, the

court below was correct in holding that, absent an express legislative direction to the contrary, computation of a net operating loss for 1941 must be determined by 1941 law, and the Fifth Circuit was wrong in its earlier holding to the contrary.[45]

CONCLUSION

The necessary conclusion is that, in restoring the net operating loss deduction in 1939 under Sections 23 (s) and 122 of the Code, the legislative purpose and general intent were the same as reflected by the earlier Revenue Acts allowing a net loss deduction. The earlier Revenue Acts required that net loss be computed in accordance with the law applicable to the year for which a net loss is claimed, rather than according to the law governing the year for which a deduction therefor is sought. As we have shown, the purpose of the Code's net operating loss provisions also requires such a computation of net operating loss. The structure and aim of Section 122 have the same effect as a specific provision requiring the computation of net operating loss for a given year according to the law applicable to that year. No exception was made in the case of Section 23 (g) (4), which is directly involved here. Indeed, that section was expressly not made applicable "with respect to" 1941. We believe the conclusion is inescapable that taxpayer is not entitled to apply Section 23 (g) (4) in comput-

[45] On the *Moore* case, see also *supra*, pp. 14, 24–25, 27, 60–64.

ing net operating loss for 1941, and therefore is not entitled to the net operating loss deduction it claims.

The decision below is therefore correct and should be affirmed.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

THERON LAMAR CAUDLE,
Assistant Attorney General.

ELLIS N. SLACK,
OSCAR H. DAVIS,
MELVA M. GRANEY,
Special Assistants to the Attorney General.

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APPENDIX

I

Internal Revenue Code (26 U. S. C.):

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

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(g) *Capital Losses.*—

(1) *Limitation.*—Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in section 117.

(2) *Securities becoming worthless.*—If any securities (as defined in paragraph (3) of this subsection) become worthless during the taxable year and are capital assets, the loss resulting therefrom shall, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

(3) *Definition of securities.*—As used in this subsection the term "securities" means (A) shares of stock in a corporation, and (B) rights to subscribe for or to receive such shares.[1]

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[1]An additional paragraph (4) was added to this subsection by Section 123 (a) (1) of the Revenue Act of 1942 (*infra*, p. 76) and amended by Section 112 (a) of the Revenue Act of 1943 (*infra*, p. 79). The paragraph as so added and amended is effective only with respect to taxable years beginning after December 31, 1941 (see Section 101 of the 1942 Act, *infra*, p. 74, and Section 112 (c) of the 1943 Act, *infra*, p. 79), and reads as follows:

"(4) *Stock in affiliated corporation.*—For the purposes of paragraph (2) stock in a corporation affiliated with the tax-

(s) [as added by Section 211 (a) of the Revenue Act of 1939, c. 247, 53 Stat. 862] *Net Operating Loss Deduction.*—For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122.

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(26 U. S. C. 1946 ed., Sec. 23.)

SEC. 117. CAPITAL GAINS AND LOSSES.

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(d) [as amended by Section 212 (a) of the Revenue Act of 1939, *supra*] *Limitation on Capital Losses.*—Long-term capital losses shall be allowed, but short-term capital losses shall be allowed only to the extent of short-term capital gains.[2]

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(26 U. S. C. 1946 ed., Sec. 117.)

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payer shall not be deemed a capital asset. For the purposes of this paragraph a corporation shall be deemed to be affiliated with the taxpayer only if:

"(A) at least 95 per centum of each class of its stock is owned directly by the taxpayer; and

"(B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the company in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), an' ities, or gains from sales or exchanges of stocks and securities; and

"(C) the taxpayer is a domestic corporation."

[2] This subsection was amended by Section 150 (c) of the Revenue Act of 1942, effective under Section 101 of the 1942

SEC. 122 [added by Section 211 (b) of the Revenue Act of 1939, *supra*]. NET OPERATING LOSS DEDUCTION.

(a) *Definition of Net Operating Loss.*— As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).[3]

(b) [as amended by Section 153 (a) of the Revenue Act of 1942] *Amount of Carry-Back and Carry-Over.*—

(1) *Net operating loss carry-back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by deter-

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Act (*infra*, p. 74), only with respect to taxable years beginning after December 31, 1941, to read as follows:

"(d) *Limitation on Capital Losses.*—

"(1) *Corporations.*—In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

"(2) *Other taxpayers.*— * * *"

[3] By section 105 (e) (3) (A), of the Revenue Act of 1942, (*infra*, p. 75), paragraph (a) of section 122 was amended by changing the last phrase to read: "with the exceptions, additions, and limitation provided in subsection (d)." Under Section 101 of the 1942 Act (*infra*, p. 74) this change was effective only with respect to taxable years beginning after December 31, 1941.

mining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

(2) *Net operating loss carry-over.*—If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss and without regard to any net operating loss carry-back. For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1941 shall be reduced by the sum of the net income for each of the two preceding taxable years (computed for each such preceding taxable year with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and computed by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year).

(c) [as amended by Section 153 (b) and Section 105 (e) (3) (B) of the Revenue Act of 1942] *Amount of Net Operating Loss Deduction.*—The amount of the net operating loss deduction shall be the aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year reduced by the amount,

if any, by which the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal-tax net income (computed without such deduction and without the credit provided in Section 26 (e));

(d) *Exceptions and Limitations.*—The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:[4]

(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4);

(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23 (b), relating to interest or indebtedness incurred or continued to purchase or carry certain tax-exempt obligations;

(3 No net operating loss deduction shall be allowed;

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[4] By section 105 (e) (3) of the Revenue Act of 1942 (*infra*, p. 75), paragraph (d) of section 122 was amended to read as follows:

"(d) *Exceptions, additions, and limitations.*

"The exceptions, additions, and limitations referred to in subsections (a), (b), and (c) shall be as follows:"

Under Section 101 of the 1942 Act (*infra*, p. 74), this change was effective only with respect to taxable years beginning after December 31, 1941.

(4) Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117 (b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of the long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of the short-term capital gains;[5]

(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions and limitations

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[5] This paragraph was amended by Section 150 (e) of the Revenue Act of 1942 (*infra*, p. 77) effective under Section 101 of the same Act, (*infra*, p. 74) only with respect to taxable years beginning after December 31, 1941, to read as follows:

"(4) Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 117 (b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains."

[6] Paragraph (6) was added by Section 105 (e) (3) (C) of the 1942 Act, (*infra*, pp. 75–76), and reads as follows:

"(6) There shall be allowed as a deduction the amount of tax imposed by Subchapter E of Chapter 2 paid or accrued within the taxable year, subject to the following rules—

"(A) No reduction in such tax shall be made by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

specified in paragraphs (1) to (4) of this subsection.

(6) * * *

(e) [as amended by Section 153 (c) of the Revenue Act of 1942] *No Carry-Back to Year Prior to 1941.*—As used in this section, the term "preceding taxable year" and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941.[7]

(26 U. S. C. 1946 ed., Sec. 122.)

II

1. Revenue Act of 1942, c. 619, 56 Stat. 798:

SEC. 101. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.

"(B) Such tax shall be computed without regard to the adjustments provided in section 734; and

"(C) Such tax, in the case of a consolidated return for excess-profits tax purposes, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary."

The paragraph is applicable under Section 101 of the Revenue Act of 1942, *infra*, only with respect to taxable years beginning after December 31, 1941, except to the extent the paragraph may come into play under Section 122 (b) (1) and (2) of the Code, *supra*, pp. 70–71, which is applicable to the year 1941. See fn. 20, 37, *supra*, pp. 33, 56.

[7] The amendments to subsections (b), (c), and (e) of Section 122 made by Section 153 of the 1942 Act (*infra*, pp. 77–79) related primarily to the carry-*back* of net operating losses and, by Section 153 (e) of the 1942 Act (*infra*, p. 79) were made effective with respect to taxable years beginning after December 31, 1940.

SEC. 105. TAX ON CORPORATIONS.

* * * * *

(e) *Technical Amendments Made Necessary by Change in Base for Corporate Tax.*—

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(3) *Computation of net operating loss deduction.*—Section 122 (relating to net operating loss) is amended to read as follows:

(A) Subsection (a) is amended to read as follows:

"(a) *Definition of Net Operating Loss.*—As used in this section, the term 'net operating loss' means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d)."

(B) Subsection (c) is amended by striking out the parenthesis at the end thereof and inserting in lieu thereof the following: "and without the credit provided in section 26 (e))".

(C) Subsection (d) is amended by striking out "exceptions and limitations" and inserting in lieu thereof "exceptions, additions, and limitations" and by inserting at the end thereof the following new paragraph:

"(6) There shall be allowed as a deduction the amount of tax imposed by Subchapter E of Chapter 2 paid or accrued within the taxable year, subject to the following rules—

"(A) No reduction in such tax shall be made by reason of the credit for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

"(B) Such tax shall be computed without regard to the adjustments provided in section 734; and

"(C) Such tax, in the case of a consolidated return for excess-profits tax purposes, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary.

SEC. 123. DEDUCTION FOR STOCK AND BOND LOSSES ON SECURITIES IN AFFILIATED CORPORATIONS.

(a) *Stock Losses.*—

(1) *In General.*—Section 23 (g), (relating to capital losses) is amended by inserting at the end thereof the following:

"(4) *Stock in affiliated corporation.*—For the purposes of paragraph (2) stock in a corporation affiliated with the taxpayer shall not be deemed a capital asset. For the purposes of this paragraph a corporation shall be deemed to be affiliated with the taxpayer only if:

"(A) at least 95 per centum of each class of its stock is owned directly by the taxpayer; and

"(B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been from sources other than royalties, rents, dividends, interest, annuities, or gains from sales or exchanges of stocks and securities; and

"(C) the taxpayer is a domestic corporation."

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SEC. 150. CAPITAL GAINS AND LOSSES.

* * * * *

(e) *Net Operating Loss Deduction.*—Section 122 (d) (4) is amended to read as follows:

"(4) Gains and losses from sales or exchanges of capital assets shall be taken into account without regard to the provisions of section 117 (b). As so computed the amount deductible on account of such losses shall not exceed the amount includible on account of such gains.

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SEC. 153. TWO-YEAR CARRY-BACK OF NET OPERATING LOSSES.

(a) *Determination of Carry-Back.*—Section 122 (b) (relating to the amount of the net operating loss carry-over), is amended to read as follows:

"(b) *Amount of Carry-Back and Carry-Over.*—

"(1) *Net operating loss carry-back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6); and (B) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

"(2) *Net operating loss carry-over.*—If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4) and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss and without regard to any net operating loss carry-back. For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31, 1941 shall be reduced by the sum of the net income for each of the two preceding taxable years (computed for each such preceding taxable year with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and computed by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year)."

(b) *Amount of Net Operating Loss Deduction.*—Section 122 (c), relating to the amount of the net operating loss deduction, is amended by inserting in lieu of "amount of the net operating loss carry-over" the following: "aggregate of the net operating loss carry-overs and of the net operating loss carry-backs to the taxable year."

(c) Section 122 (e) is amended to read as follows:

"(e) *No Carry-Back to Year Prior to 1941.*—As used in this section, the term 'preceding taxable year' and the term 'preceding taxable years' do not include any taxable year beginning prior to January 1, 1941."

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(e) *Effective Date.*—The amendments made by this section shall be applicable only to taxable years beginning after December 31, 1940.

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a. Revenue Act of 1943, c. 63, 58 Stat. 21:

SEC. 112. DEDUCTION FOR LOSSES ON SECURITIES IN AFFILIATED CORPORATIONS.

(a) *Stock Losses.*—Section 23 (g) (4) (B) of the Internal Revenue Code (relating to losses on stock of affiliated corporations) is amended to read as follows:

"(B) more than 90 per centum of the aggregate of its gross incomes for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the company in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, or gains from sales or exchanges of stocks and securities; and".

* * * * *

(c) *Taxable Years to Which Applicable.*—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1941.

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